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THE

MEDICAL JURISPRUDENCE

OF

INSANITY.

BY

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SECOND EDITION.

WITH REFERENCES TO THE SCOTCH AND AMERICAN DECISIONS.

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I DEDICATE

THIS SECOND EDITION, AS I DEDICATED THE FIRST,

TO MY FATHER,

W. A. F. BROWNE, Esq., M.D.,

LATE COMMISSIONER IN LUNACY FOR SCOTLAND,

WITH MY MOST AFFECTIONATE REGARDS

AND SINCERE ADMIRATION.

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PREFACE.

The Report of the Select Committee of the House of Commons with reference to the Homicide Bill of last session, contained these words: "It would seem that a code aiming, like the Homicide Bill, to reduce a large and complicated subject to a few abstract propositions, can hardly be made intelligible to the non-legal mind without the use of illustrations by putting particular cases, an important innovation which your committee recommend to the favourable attention of the House."

When I undertook, in the first instance, to write a work upon insanity and its legal relations, I was impressed with the truth of the proposition which the Select Committee embodied in their report; and I endeavoured to arrange the abstract principles of law with regard to Responsibility and Capacity in relation to actual illustrations drawn from the facts of defect and disease. That effort has, I believe, been crowned with some success. The work received kind encouragement, and at the hands of every reviewer, save one, most generous criticism. It is due to the fact that the medical and legal press in England, Scotland, and America, received the first edition with more favour than perhaps it deserved, that a second edition has been called for; and it is because of the praise which was bestowed upon that earlier work that I have endeavoured to make the present edition more complete and more practically useful. I have re-written and rearranged the book, and reconsidered, and, in some instances, recast every proposition.

Since the publication of the first edition, several important cases have been decided, and several works upon the subject of

law and insanity have been published. I have made it my duty to become familiar with these. I have, however, in no material particular altered the views I expressed in 1871, although I have in some cases modified the form, and in many cases added illustrations of the correctness of these opinions. I have found, with satisfaction, that some medical men who stand high in their profession hold the same doctrine with regard to disease, and the responsibility and capacity of those who labour under it, that I then enunciated. There are, however, still many who regard the law in this relation as erroneous and absurd. If this work does nothing to convince the latter, it may at least refute some of their arguments.

The chapters have been subdivided into sections, to which the index and table of contents refer; the pages of the first edition being noted by boldface superior figures. I have added much to the work as it was originally published, and have referred to all the most important cases which have been decided in England, Scotland, and America. In that respect, I am confident that the work will prove—and it is the highest encomium on a text-book—useful.

J. H. BALFOUR BROWNE.

5 Essex Court, Temple,
London, *April*, 1875.

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CHAPTER I.

INSANITY, CAPACITY, AND RESPONSIBILITY.

§ 1. **Introduction.**—There are few questions which have excited more general interest, few which have been more publicly discussed, and few which have, in general society, in medical literature, and in the newspaper press, received such unsatisfactory answers as those which are connected with the medical jurisprudence of insanity. The question, however, as to the responsibility of the insane for criminal acts is the one which has drawn out the greatest amount of miscellaneous answering. Whenever a crime of unusual atrocity has been committed, and whenever there is no other defence, the plea of insanity has been set up, and whether it has been accepted by the jury as a sufficient answer to the charge or not, it has been adopted by certain members of the public, and that for very obvious reasons. The public is led by sympathies rather than by reason. When it at first hears of the perpetration of some ghastly crime, all its sympathies are with the victim. If it had its way, the nearest tree would be called into requisition by angry Judge Lynch. But the law wisely steps in and protects accused persons, and says vengeance must only fall upon the guilty. To discover the really guilty person, time must elapse, and inquiry must be made. Meanwhile, the victim is forgotten, and sympathy is with the criminal. The public reasons, nothing we can do to him, will bring the dead man back. Then, too, the very calmness of Justice makes it seem cruel in the eyes of the people; and they are only too glad to adopt any reason which may seem to have some truth in it, and which may secure leniency to the criminal. For that reason, some persons are always sure to accept insanity as an explanation of the crime and as a reason for the exercise of lenity.

§ 2. **The question of capital punishment** is very often associated with the question of the responsibility of the insane. If capital punishment were done away with, we would certainly hear less of the insanity of accused persons; but it is altogether wrong to allow one's views of the expediency or rightness of punishment by death to influence one's views of the mental condition of any person accused of crime, or to suffer one's opinions of what the law ought to be to affect one's obedience to the law as it exists. The wide-spread feeling of the inutility of capital punishment is doubtless an indication that the country is in a condition to do without punishment by death, as a means of enforcing obedience to its laws. It is a true, although apparently paradoxical, maxim in relation to legislation, that whenever a people hates punishment the most, it can do with the least. Were crimes of violence common, folk would be content with the gallows and the gibbet; as it is, the lives of honest men being in but little danger, they can afford to sympathize with criminals, and lay the axe at the root of the gallows-tree. But one's distaste to capital punishment never can be a reason for saying that every criminal is insane.

§ 3. **The atrocity of the Crime in connection with Insanity.**—It is not at all uncommon in society to ascribe insanity to any individual who perpetrates a crime unusually shocking. It seems to be a theory that a sane man may murder one or two people, but that any one who murders half a dozen must be mad. It does some credit to the persons who entertain this theory that they have such a high view of humanity as to regard anything particularly atrocious as inhuman and unnatural, and that they must resort to an hypothesis of insanity to account for anything that is singularly horrible in conduct. But it is clear that this would scarcely do for a test. Were it once adopted, it would become common for those who wanted to kill one person to kill a very large number, in order that they might enjoy an immunity from punishment on the ground of insanity. Running-a-muck would be encouraged by such legislation. But a careful examination of all the cases of horrible murders which have occurred in times past will convince any one that the

mere atrocity of the crime is no indication of the mental condition of the criminal, and that the ordinary society phrase, which it glibly applies to every crime which is more than usually revolting, "It must have been a madman who did it," is very far from the truth, and has been the cause of a considerable amount of misunderstanding as to the real nature of responsibility. In many eyes, human life is not sacred, and there are innumerable instances in which it has been sacrificed with the utmost recklessness. In some eyes, the only life that is sacred is their own; and to save themselves, or to procure for themselves some joy or advantage, they are willing to sacrifice the lives of others, and these feelings, although to a high-minded man they seem abominable, unnatural, and insane, are nevertheless in these persons natural and healthy instincts. It is to protect society from such persons that laws exist.

§ 4. **Reasons why the question of Responsibility has not received a Satisfactory Answer.**—It has seemed necessary to us to allude to one or two preliminary subjects with the view of showing why the questions as to the legal relation of the insane have received such unsatisfactory answers, notwithstanding the great amount of confused and promiscuous discussion. The strong feeling against capital punishment, a crude notion that any act very revolting is the result of mental disease, which has been fostered by the knowledge that many acts of terrible cruelty have been committed by the insane, a very wayward and somewhat uninformed outcry upon the part of some members of the medical profession that the laws were unjust, and the general ignorance of the people of the real meaning of law, the real reason of punishment, and of exemption from punishment, have contributed to the misunderstanding of the whole subject, and to its somewhat unsatisfactory condition, in so far as general and medical literature is concerned at the present time. After the most careful consideration, after the most diligent inquiry into the reasons that have been urged for and against the rules of law which are at present in existence, after giving due weight to the arguments adduced and the opinions propounded by some of the ablest members of the medical profession who are

antagonists of the present legal tests of sane citizenship and punishability, we are constrained to admit that we can see no injustice in the present state of the law, that in every respect it is abreast of contemporary science, and that, with due explanations, no better tests could, at the present time, be laid down in respect to the civil capacity and criminal responsibility of the insane.

§ 5. **The necessity for Legislative Enactments as to the Insane.**—It has never been disputed that there was a necessity for class legislation with reference to the insane. The laws are laid down to guide the conduct of men amongst men. Much wisdom and experience has gone to their making, and although fault is always to be found with them, although, from time to time, as circumstances change, as men's characters alter, changes and amendments are demanded in the statute book, still it is at all times necessary to compel obedience to the existing laws. But this compulsion of obedience to the laws, which is a part of the law, takes for granted individuals who understand what the command of the supreme power is, and who, while understanding that command, are in a position in which they can give or withhold obedience. All commands must imply a person who understands what is ordered, and who can do or who can refrain from doing what is required of him. It would be absurd to tell a wind to blow or rain to fall. Such an order in a human mouth would not be a command. So the word would be equally inapplicable to an order issued by one man to another in a tongue he did not understand and without gestures which he could appreciate, or by one man to another to do something which was impossible, such as to put out the stars, or remove a mountain. In all these cases, although in one aspect—the aspect of him who utters—these may seem commands, in the other aspect—that of him who hears—they are nothing of the sort. So, laws which are simply commands are only addressed to those members of a community who can understand what they allow or forbid, and who, joined with this knowledge, have the power to give or to withhold obedience to these orders. Now, as there is a class of persons in the community who are not in a position at the same

time to know the law and voluntarily do it, or refrain from doing it, it is necessary to recognize the fact that the laws as addressed to the community are not applicable to them, and hence it arises that exceptional legislation is necessary for this class of persons, or persons who are called insane. There has been some confusion introduced into this question by the use of the word insane, and for ourselves we should have preferred a definition of disability and irresponsibility, without regard to the cause by which such was produced. But with the explanation that the term insane, as used in law, does not include all those who are insane in fact, but only those who are not entitled to perform certain acts of citizenship, and those who are not punishable in respect of any crime they may commit—an explanation which has been repeatedly overlooked—no evil can arise from the use of the term insane as applicable to that class, to which the laws are not applicable, and for whom it is necessary to legislate specially.

§ 6. **Laws with regard to Lunatics.**—It being seen that certain special legislation was necessary, it became necessary to consider what these laws were. First, it was perceived that every man has a right to his personal liberty so long as he uses that liberty in a way which does not deprive his neighbors or fellow-men of a like enjoyment of personal freedom. In this place, it is unnecessary to consider the real fundamental principle upon which all law is founded, and which justifies all deprivation of freedom. It has been argued ably by the late Mr. Mill, and more recently, and not less ably, by Mr. Fitzjames Stephen; but it is not with the foundation but with the facts of law that we have here to do. The principle which is enunciated above, entitled the State to interfere with the liberty of insane persons who were dangerous to themselves or others, and hence it became usual to confine insane persons in places where they might be prevented from doing such injury, and where, at the same time, they might, by care and treatment, be brought to that condition of health which would again entitle them to the enjoyment of all the rights of a citizen. In old times, when the checks of the law were less careful than they are at present, these asylums or retreats, in which insane persons were

incarcerated by their friends, were sometimes made the instruments of private ends of injustice, and sometimes lent themselves as the means of a plot which had the satisfaction of private vengeance, pride, jealousy, or avarice, for its end. One of these is described in Smollett's novel, Sir Launcelot Greaves. But those days are gone by. The law has not only made it necessary that two medical men should certify that the person who is about to be incarcerated is of unsound mind and a fit person to be detained, but has instituted a Board of Inspectors, (Commissioners,) whose duty it is to visit all such establishments and to listen to the complaints of any person who may think he is unjustly detained, and who have the power, in the event of any contravention of such obvious law and statute enactment as the detention of a person of sound mind, to deprive the proprietor of such asylum of his license, by which alone he is warranted in receiving lunatics for profit into his house. Besides, the law has provided for the care and treatment of those persons whose friends are not in a position to send them to one of those private asylums which are kept for profit, by the erection and maintenance of large pauper asylums for the various boroughs and counties; and these, from the excellence of their management, from the humanity which characterizes their treatment, from the scientific work which is done in them, and from the large and increasing percentage of cures effected in them, are institutions in which the country may well feel pride. But the question of the compulsory detention of lunatics in asylums or hospitals does not really fall within the scope of our present undertaking. The law which regulates the admission of persons into asylums, their detention in and their discharge from asylums, as well as the duties of the Commissioners in Lunacy, and many other matters connected therewith, is embodied in various statutes, and to these, and the works which contain and comment upon them, the reader must be referred.[1] The questions with

[1] The Lunacy Acts by Danby P. Fry. London: 1864. Archbold's Law relative to Pauper Lunatics. London: 1854. Elmer's Practice in Lunacy. London: 1871. Aston's Law of Pauper Lunacy. 1849. Phillips' Law concerning Lunatics, etc. London: 1858. Sablon & Browne's Handbook of Law and Lunacy. London: 1872. Winslow's Law of Lunacy. London: 1873.

which we have in this work more particularly to do, are those which are connected with the enjoyment of civil privileges or with the immunity from punishment in the event of an act being done, or a crime being committed by a person of unsound mind. A man makes a will and dies, and his relations who are not mentioned in the testament, and who would have profited in case of an intestacy, assert that the testator was mad, and therefore unable to make a will. A man with property is profuse in his expenditure, and those who would profit if he was a miser, maintain that he is insane, and therefore unable to manage his affairs, and request that his hands be tied by the red-tape of the law, and make an effort to have a committee of his person and estates appointed. A man is murdered, and the only person who saw it done is a person who is regarded by some as an imbecile, yet the prosecution tender him as a witness. An act which in the case of a sane man would be a crime is committed, and the question arises as to whether the individual is sane or insane; whether, under the law as it at present stands, the person committing the crime is liable to suffer punishment for the act committed by him, or is to be exempted on the ground of unsoundness of mind? These questions, which are evidently, in individual cases, of paramount importance, and which very frequently arise in practice, indicate the necessity of arriving at some thorough answer to the question—What is this insanity which incapacitates a man from making a will, from managing his own affairs, and which, in case he commits a crime, will protect him from the ordinary consequences of such an act? These, then, are the questions with which we have to do in this place. We will consider the last first, as it is the question concerning the answer to which there has been most difference of opinion.

§ 7. **Responsibility for Crime considered—Foreign Rules of Law.**—It may be well before entering on the statement or the discussion of the law of England in regard to the responsibility for criminal acts, to refer to the law of one or two other countries in reference to this matter. In Scotland, where the whole of the questions of criminal law have received intelligent and philosophical attention, it is

held that insanity is an absolute defence if proved.[1] But the insanity which will prove an absolute defence is to be ascertained by the same rules which have been laid down in England.[2] In France, the article of the penal code which bears upon this subject is: "There can be no crime nor offence if the accused was in a state of madness at the time of the act." In Germany, the latest penal code has laid it down that "an act is not punishable when the person at the time of doing it was in a state of unconsciousness or of disease of mind by which a free determination of will was excluded." And the revised statutes of New York enact, that "no act done by a person in a state of insanity can be punished as an offence." Although some of these rules have been praised as incomparably better than that which is laid down in England, these praises have generally come from medical men who have failed to understand the subject, and are for the most part quite beside the mark. The German definition of irresponsibility is the only one which indicates what the law regards as the nature of insanity, and that view differs in no particular from that which is entertained in England. To know whether the criterion of France or of America is less narrow or better founded than that of this country, we would require to know what the law regards as insanity or madness in these countries. It would be by no means an incorrect statement of the law of England to say that insane persons are irresponsible for criminal acts and incapable of civil ones, but the difficulty arises in endeavoring to ascertain the precise meaning of the word insane, who are included and who are excluded from responsibility and capacity by the term, and precisely the same difficulty arises in connection with the use of the same word in the French Code and the New York Statutes. The real meaning of these sentences can only be discovered by an examination of the cases which have been decided under them, and by the tests which the Judges who have had to administer these laws have laid down. Such an examination proves that in no particular does the law of either of these countries differ from our own, and that the praise

[1] 1 Hume, 41. And see Macdonald's Criminal Law of Scotland, p. 15.

[2] Per Lord Justice-Clerk Hope, in the Lord Advocate *v.* Gibson (High Court) 23d Dec. 1844, 2 Broun's Justiciary Repts. 332.

which has been bestowed upon them by certain zealous members of the medical profession was somewhat absurd.

§ 8. **Responsibility of the Insane—Former English Rules.**—The effort of the Judges has at all times been to discover whether an individual who was brought before them charged with a criminal offence was really amenable to the laws or not, whether at the time he committed the act he knew what he was about, whether he knew that the act he was perpetrating was forbidden, and whether he had the power to refrain from doing it. If he did not know what he was about, if he did not know that the act done was contrary to the law of God or of the land, if he had not the power of volition over his own acts, he was insane in the eye of the law and irresponsible. With the view to the ascertainment of these facts, they laid down certain tests, some of which have scarcely been adequate to the end in view, but all of them infinitely better than any which the most ingenious medical men have proposed to substitute for them. Lord Coke classified madmen, and described four kinds of men who might be looked upon as *non compos mentis:* "1. An *ideota,* which from his nativitie by a perpetual infirmity is *non compos mentis;* 2. Hee that by sickness, grief, or other accident, wholly loseth his memory and understanding; 3. A lunatic that hath sometimes his understanding and sometimes not, *aliquando gaudel lucidis intervallis,* and therefore he is called *non compos mentis* so long as he hath not understanding; 4. He that by his own vitious act for a time depriveth himself of his memory and understanding, as he that is drunken."[1] It is not argued that Lord Coke's classification is without defect. If it pretended to be a complete definition of the legal tests of insanity it would be exceedingly defective, for in the first place the first is unintelligible without a definition of the word idiot; the second is a description which was never realized in fact, as no lunatic ever was entirely deprived of memory and understanding; and third, he refers only to that form of partial insanity which is marked by lucid intervals, and not to that with which we are all familiar, which may be called by any name one pleases, but which is characterized by delusions

[1] 2 Coke on Littleton, 247 *a.*

upon one or more subjects while the individual thus affected is rational in relation to other matters. This latter came to be recognized in time, and we find Lord Hale saying: "There is a partial insanity and a total insanity. The former is either in respect to things *quoad hoc vel illud insanire*. Some persons that have a competent use of reason in respect of some subjects are yet under a particular dementia in respect of some particular discourses, subjects, or applications, or else it is partial in respect of degrees, and this is the condition of very many, especially melancholy persons, who, for the most part, discover their defect in excessive fears and griefs, and yet are not wholly destitute of the use of reason, and this partial insanity seems not to excuse them in the committing of any offence for its matter capital; for doubtless most persons that are felons of themselves and others, are under a degree of partial insanity when they commit these offences. It is very difficult to define the invisible line that divides perfect and partial insanity, but it must rest upon circumstances duly to be weighed by judge and jury, lest, on the one side, there be a kind of inhumanity towards the defects of human nature, or, on the other side, too great an indulgence given to great crimes."[1] And we have Baron Alderson saying that a man may be *non compos mentis quoad hoc*, and yet not *non compos mentis* altogether.[2] But this rule as to partial insanity has been universally acted upon in English Courts. Thus, in the trial of Arnold who shot at Lord Onslow in 1723, Tracy, J., remarked: "It is not every kind of frantic humour, or something unaccountable in a man's actions, that points him out to be such a madman as is exempt from punishment: it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing no more than an infant, than a brute, or a wild beast. Such a one is never the object of punishment."[3] It is true, as we have pointed out above with reference to Lord Coke's description that no lunatic ever was entirely deprived of his understanding and memory, or in the words which Mr. Erskine used in 1800, when defending Hadfield, who was charged with shooting at the King, "No such madness ever existed in the world." But although the

[1] Pleas of the Crown, 30. [2] 2 Hill's Case, Den. C. C. 260.
[3] 8 Hargrave's St. Tr. 322; 16 Howell's St. Trials, 764.

earlier decisions seem scarcely to have recognized the real nature of insanity, and although the Judges in consequence failed to give what we can now regard as perfectly adequate tests of the insanity which would exempt from punishment, they have all gone upon the implied principle which is fundamental in our criminal law, viz., that the individual whom it is sought to bring within the operation of the law "has mental capacity, is a free agent, and possesses the power of electing to abstain from what is forbidden rather than suffer the consequences of offending."[1] After the Hadfield case, to which we have just alluded, the test that there must be entire deprivation of memory and understanding seems to have been abandoned, and delusion seems to have been adopted as a test of exculpating insanity in its stead. In the course of his speech for the prisoner, Mr. Erskine, after rejecting the old test, on the ground that no insane man ever was without all remembrance of what is past, and all power of judging of what is present, said in all the cases that have filled Westminster Hall with complicated considerations, "the insane persons had not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but had in general been remarkable for subtility and acuteness, and that delusion of which the criminal act in question was the immediate unqualified offspring, was the kind of insanity which should rightly exempt from punishment. Delusion, therefore, where there is no frenzy or raving madness is the true character of insanity." There is a good deal which might be said in favor of making delusion the test of insanity, and it has been adopted by some writers as at least an alternative test.[2] One of our modern and most able philosophical writers has made belief the very fundamental concept. He holds that knowing is not before it, and that knowledge without believing it to be knowledge would not be knowledge.[3] With a very little ingenuity, it might be shown that as insanity can only be manifested through mind, and as any change in the mental status must produce a change in the mental beliefs

[1] Broom's Com. 869; 880.

[2] Shelford's Treatise of the Law concerning Lunatics, etc., 2d ed. pp. 41, 42.

[3] Herbert Spencer's Principles of Psychology, 13.

which accompany and are part of these conditions, that consequently all insanity was manifested in morbid beliefs, and that consequently delusion was a good test of insanity. But it obtained no permanent place as a test of insanity in courts of law; and in the trial of Bellingham,[1] it was decided that "although a man might be incapable of conducting his own affairs, he may still be answerable for his criminal acts if he possessed a mind capable of distinguishing right from wrong." Again, Lord Lyndhurst laid it down that "in order to be irresponsible, the accused must have been ignorant that his act was a crime against the laws of God and nature."[2] These opinions were almost invariably acted upon by the Judges, and found their way into the text-books. Thus, Mr. Chitty[3] says: "The substantial question presented to the jury is whether, at the time the alleged criminal act was committed, the prisoner was capable of judging between right and wrong, and did not *then* know he was commiiting an offence against the law of God and of nature." And Russell, in his standard work, gives the inability to distinguish right from wrong as the characteristic of that kind of insanity which exempts from punishment of crime.[4]

§ 9. **Rules of Law considered.**—All these rules of law are open to one objection, and that is, that they have not sufficiently included reference to the volitional character of crime as distinguished from the act which is the direct result of disease. It is clear that a man might be aware that if a thing was forbidden, he might know that it was contrary to the law, and yet he might not be in a position to refrain from the act. There can be little doubt that that is a cogent objection against all these rules. We cannot think, however, that these rules were unjust in practice. We feel convinced that in most cases the jury did not understand the word "know" in its separate, philosophical sense, as distinguished from desires and will, but regarded the knowledge of the law which was required to constitute responsibility in law, as knowledge which is passing over into act, and in that was inclusive of the volitional element which is necessary to the

[1] See 1 Collinson on Lunacy, 637. [2] Rex *v.* Offord, 5 Car. & P. 168.
[3] Med. Jurisprudence, 354. [4] Crimes and Misdemeanors, 12.

constitution of the idea of criminality. Still we regard all these rules as defective; and we are of opinion that the questions which the House of Lords proposed to the Judges after the trial of McNaughten, who shot Mr. Drummond in 1843, and which elicited those answers which may be regarded as the authoritative exposition of the law at the present time, were called for. These answers, which are given below, have met with somewhat fierce opposition, and it may be well to consider shortly whether these afford a satisfactory test of insanity in relation to irresponsibility. It seems to us quite unnecessary to dwell longer upon the decisions which were given before that time; and although criticism is easy, it is not profitable.

§ 10. The Answers of the Judges to the House of Lords Questions.[1]

Q. 1. What is the law respecting alleged crimes committed by persons afflicted with insane delusions in respect of one or more particular subjects or persons; as for instance when, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed

[1] A bill has been introduced into Parliament during the present session to amend the law of homicide. It is dated 24th March, 1874, and has the name of Mr. Russell Gurney on the back of it; but it was, we have reason to believe, drawn by Mr. Fitzjames Stephen, Q. C. Its 24th section is as follows: "Homicide is not criminal if the person by whom it is committed is at the time when he commits it prevented, by any disease affecting his mind,

"(*a*) From knowing the nature of the act done by him;

"(*b*) From knowing that it is forbidden by law;

"(*c*) From knowing that it is morally wrong; or,

"(*d*) From controlling his own conduct.

"But homicide is criminal, although the mind of the person committing it is affected by disease, if such disease does not in fact produce some one of the effects aforesaid in reference to the act by which death is caused, or the inability to control his conduct is not produced exclusively by disease. If a person is proved to have been labouring under any insane delusion at the time he committed the homicide, it shall be presumed, unless the contrary appears or is proved, that he did not possess the degree of knowledge of self-control hereinbefore specified." This bill was, we have reason to believe, submitted to the Judges for their consideration, and we further believe that they reported against the measure, partly on the ground that it would be most anomalous and improper to deal with the defence of insanity in relation to homicide, without at the same time dealing with it in relation to other offences. The bill has been referred to a Select Committee of the House of Commons. See note to §§ 10 and 16, in Addenda.

grievance or injury, or of producing some supposed public benefit?

A. 1. Assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that notwithstanding the accused did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your Lordships mean the law of the land.

Q. 2. What are the proper questions to be submitted to the jury where a person alleged to be affected with insane delusion respecting one or more particular subjects or persons is charged with the commission of a crime, (murder for example,) and insanity is set up as a defence?

Q. 3. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

A. 2 and 3. As these two questions appear to us to be more conveniently answered together, we submit our opinion to be, that the jury ought to be told in all cases that every man is to be presumed sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.

Q. 4. If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?

A. 4. On the assumption that he labours under partial delusion only, and is not in other respects insane, he must be considered in the same situation, as to responsibility, as if the facts with respect to which the delusion exists were

real. For example, if, under the influence of delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."[1]

§ 11. **These Answers considered — Objections.**—This authoritative statement of the law has been over and over again discussed, and its wisdom repeatedly questioned. Innumerable members of the medical profession have found fault with these answers, and have given their reasons for regarding the Judges who had to do with them as possibly upright but undoubtedly foolish.[2] One of the ablest of these has distinctly said: "With regard to this test, I may say, and most emphatically, that it is utterly untrustworthy, because untrue to the obvious facts of Nature."[3] It is, therefore, necessary to consider whether these tests are unsatisfactory, and we shall do so in the order of their importance, and consider the third first—Can the knowledge of the nature and quality of the act, or the knowledge of the rightness or wrongness of the act, at the time of its commission, be regarded as a satisfactory test of responsibility? The medical men who assert the foolishness of the Judges hold that it cannot. Their arguments are somewhat curious. It is asserted, with perfect truth, that sanity passes into insanity, and insanity into sanity, as gradually as night passes into day, or day into night[4]—that, therefore, it is impossible to draw a line between these two conditions; and from these statements they draw the inference that any test of insanity, as it is not founded upon nature, must be absurd. With reference to this argument, we may be allowed to quote some words which we have written in answer to it in another place:

[1] 1 Car. & K. 134; 8 Scott N. R. 595.

[2] See Dr. Maudsley's "Responsibility in Mental Disease," p. 98. London: 1874.

[3] Dr. Russell Reynolds, "On the Scientific Value of the Legal Tests of Insanity," p. 34. London: 1872. He is followed, or rather was preceded, in this view by Dr. Ray, in his "Medical Jurisprudence of Insanity," and by many others.

[4] Mr. Carlyle has well said, "Every stupid man, every cowardly man, and every foolish man, is but a less palpable madman."

"Just as there is a necessity for distinguishing between day and night, so is there a necessity to distinguish sanity from insanity. It is not proposed to treat all sane men who commit crimes in the way that we treat insane men acting in the same way, nor is it proposed to treat insane criminals as we at present treat sane criminals. We are not going to make our gaols asylums, nor our asylums gaols. Hence the necessity that there is for distinguishing between those who are mentally sane and those who are mentally insane. But again stupidity passes into intelligence by as imperceptible degrees as those which constitute the progress of health to disease. Men grow in stature with God slowly. A man is not a fool to-day and a sage to-morrow. The growth of intelligence is as gradual as the growth of the body; and as the management of property and affairs presupposes the possession of intelligence, the law to protect men from themselves found it expedient to say that unless a man had intelligence he should not have complete power over his property, and it consequently became necessary to draw a line between childhood and manhood, and the law did so, saying that a man shall come of age when he is twenty-one years of age. The scientific value of this test of intelligence is evidently very small. It cannot be said that a man is really able to enter into an intelligent bargain to-day which he would have been unable to enter into yesterday. Besides, some men have more intelligence at seventeen than others have at forty-five. The absolute necessity for some such rule, however, and the impossibility of devising one more in harmony with the facts of human development, are sufficient reasons for this rough test of mental power."[1] So it is evident that there must be a rough test of sanity or insanity, or of capacity and incapacity. But surely the real position of these medical men is proveably ridiculous. Is it easier to draw a line of demarcation between guilt and innocence than between health and disease? That, too, like sanity and insanity, is the work of Nature. Guilt passes by imperceptible gradations into innocence—no one can mark the boundary; but is that a reason for asserting that no legal distinction should be made? Is

[1] Responsibility and Disease. London: 1872. Pp. 14, 15.

not guilt a result of organism just as much as insanity? and if it is rational to treat criminals punitively for their acts, is it not also rational to distinguish between those who are free agents, those who can be deterred by a certainty of punishment, from those who have no freedom, and who would not be deterred from the commission of crime by being persuaded that punishment would inevitably follow the offence? It is scarcely to be seriously argued that there should be no test of insanity—that each case should be decided on its own merits; and it is an interesting psychological fact to note that it has actually been done by men of unquestionable ability. A test being necessary, is the knowledge of right and wrong a satisfactory test? We think that it is. Some writers have argued that the test of right and wrong is not enough, and that the defence of insanity should be sustained when there is an insane delusion from which the crime emanates, and also that it should be allowed when, being insane, the defendant is forced to act by an irresistible impulse.[1]

§ 12. **The Test in relation to Monomania.**—Now, we hold that the test of insanity proposed by the Judges is sufficient in all cases to discover the punishability of a criminal who labors under mental disease; and in stating this, we reaffirm the position which has been almost invariably taken up by courts of law.[2] As a preliminary, it may be admitted that there is such a disease as monomania—a disease during the continuance of which a man is sane with reference to one subject, and insane with reference to another. Medical

[1] Wharton's Mental Unsoundness and Psychological Law, § 120. Philadelphia: 1873. Dr. Reynold's Tests of Insanity, p. 38.

[2] Rex *v.* Offord, 5 Car. & P. 168; Reg. *v.* Higginson, 1 Car. & K. 129; Reg. *v.* Stokes, 3 Car. & K. 185; Reg. *v.* Layton, 4 Cox, 149; and Reg. *v.* Edmunds, "Times," 17th Jan., 1872. See also Reg. *v.* Watson, "Times," 13th Jan., 1872; Reg. *v.* Oxford, 9 Car. & P. 525; Reg. *v.* Macnaghten, 10 Cl. & Fin. 200; 8 Scott N. R. 595; 1 Car. & K. 130; The Lord Advocate *v.* Brown, (High Court,) 8th Jan. 1866; 5 Irvine, 215; The Lord Advocate *v.* Gibson, (High Court,) 23d Dec., 1844; 2 Broun, 332; The Lord Advocate *v.* Bryce, (High Court,) 30th May, 1864; 4 Irvine, 506; The Lord Advocate *v.* Milne, (High Court,) Feb. 9, 1863; 4 Irvine, 301, at p. 343; Com. *v.* Rogers, 7 Metc. 500; Pam. Rep. by Bigelow & Bemis, p. 273; Com. *v.* Heath, 11 Gray, 303; Freeman *v.* People, 4 Denio, 1; State *v.* Spencer, 1 Zabriskie, 196; State *v.* Gardiner, Wright's Ohio Rep. 392; Com. *v.* Farkin, 3 Penn. L. J. 482; 2 Penn. L. J. Repts. 208; Vance *v.* Com. 2 Va. Cas. 132; McAllister *v.* State, 17 Ala. 434; U. S. *v.* Shults, 6 McLean, 121; People *v.* Sprague, 2 Parker, C. R. 43; State *v.* Hunting, 21 Mo. 464; People *v.* Coffman, 24 Cal. 230; State *v.* Lawrence, 57 Me. 574.

men have recognized this disease, and, as we shall hereafter see, the courts of law have acknowledged its existence, and had regard to its symptoms in many of their decisions. But even ordinary, practical people, who know nothing about medicine and less about law, have become familiar with this disease. They know that men have delusions with regard to particular things or persons or events, while in relation to every other subject they are rational and sane. The existence of such words as "kleptomania," "pyromania," "homicidal mania," in the nomenclature of insanity, shows that the separateness of diseases in relation to these manifestations in act has long been recognized. Its existence cannot be doubted, and it is certain that a man is never wholly and with regard to any subject utterly and always insane. Now, the argument against the right and wrong test of insanity is, that many of the insane who are admittedly insane know right from wrong, and that therefore it cannot be a test of insanity. If it were a test of insanity that was required, the argument would have some weight, but as it is only a test of legal insanity or responsibility which is wanted, it is quite beside the question. But in relation to this monomania to which we have alluded, may we not say that it is exactly what we should expect to find, and that instead of requiring another test in relation to delusions, the right and wrong test seems peculiarly applicable to this disease. Should we not expect to find a man knowing right from wrong in relation to every subject upon which he was sane, and yet unable to appreciate the distinction in relation to conduct which was dictated by his insane belief? Can that be said to be any reason why the knowledge of right and wrong should not be the test of insanity? Does not the existence of the moral sense in all lunatics—does not the fact that they know right from wrong—does not the fact that order and discipline in hospitals for the insane are established and maintained by means of rewards and punishments, prove that lunatics are in relation to many of their acts sane, and governed by the same motives which influence the actions of sane men? If a monomaniac speaks truth, are we to deny him virtue? If he lies, is it not vice? Can a man who is partially insane not at the same time be vicious?

Then why plead the knowledge of right and wrong by all lunatics on subjects apart from their delusions as an argument against its applicability and use as a test of their responsibility on subjects connected with their delusions? If it can be proved that the insane man lacks the power of distinguishing the good from the evil—the permitted and the forbidden in relation to his erroneous and diseased beliefs—our proposition is made out, and the knowledge of right and wrong is a perfectly adequate test even in relation to delusion. In that case, it will be proved to be a most accurate means of distinguishing the sane acts of a man from the insane acts, which is a much more important matter than distinguishing the insane man from the sane. Suppose, then, an individual to labor under a delusion that God speaks to him, and commands him to give light to the world, and that the voice even indicates in what way it is be done—say by burning down the house—although that man may know right from wrong, may know that it is wrong to lie, or steal, or swear, yet in relation to that one act, he cannot distinguish right from wrong at the time he does the deed. The supposed voice of God has made the distinction between these impossible; and therefore, in the event of his setting fire to the house, he should not be punished for arson.

§ 13. **Objections to this Test considered.**—The best argument which has been urged against this test is the following. It is urged by some physicians whose words are worthy of attention, and what they regard as arguments are worthy of due consideration: [1] "'The speculative is very different from the active, they say. Many men can *reason* well and *do* ill. Men live two lives—one in their heads, and the other in the world; and a great gulf often yawns between these, which it is impossible to bridge over. There is a wide difference between a speculative knowledge of right and wrong and the power which enables men to put speculative beliefs into action. The gulf may be left unbridged voluntarily or involuntarily. 'Hypocrisy, of course, delights in the most sublime speculations, for, never intending to go

[1] Again we quote what we have written in another place.

beyond speculation, it costs nothing to have them magnificent.' But the madman may be incapable of going beyond speculation. He may know right from wrong, and yet have none of the capacity to refrain from doing the crime, although he may be fully convinced of the criminality of the act." There is a great deal in this suggestion which is worthy of consideration. Man is, as it were, two: he thinks and he acts. It is with the latter that law has to do, and it may seem wrong to choose a test of acts from thought which is partially dissociated from conduct. True, his thoughts do influence his acts, and his acts react upon his thoughts. Still many men know the good and choose evil, and if that choice is dictated either by bodily fear or by what we have called the *duress* of disease, he ought certainly to be held irresponsible for the crime committed. To fill up the notion of a crime, you require not only the knowledge of good and evil, but the power to choose the one and refrain from the other. Responsibility implies free will. If there is no real volition, there is no real criminality. Looked at in that aspect, the present test of insanity seems defective. It is not in conformity with the facts which are capable of observation by the mass of mankind, for it is certain that unless the legal test, at the same time that it supplies a means of discovering the health or disease of the cognitive faculties, supplies a means of discovering whether the individual whose responsibility is in question has the power to refrain from the wrong of which he is conscious, it would be open to numerous objections, and there would be the most obvious and pressing necessity for a revision and alteration of the law in this respect. An engineer might as well judge of the horse-power of a locomotive from examining the cylinder and the wheels without looking at the boiler, as a jurist gauge the capacity simply by an acquaintance with the reasoning faculties. It would seem, then, that the present test is unsatisfactory, but we cannot doubt that this seeming unsatisfactoriness is due rather to a mistake and misapprehension as to the true meaning of the test than to any inherent defect in the test itself. Those who censure it do not seem to have taken the trouble to ascertain what the test really is. The words of the Judges are these: 'That before a plea of insanity should be

allowed, undoubted evidence ought to be adduced that the accused was of diseased mind, and that *at the time* he committed the act he was not conscious of right and wrong.' We cannot but think that any one who reads these words will be convinced that it is not the knowledge of right and wrong which one may speculatively entertain in calm moments which is meant to be the test of insanity, as many persons seem to imagine, and as the arguments above alluded to take for granted; but that it is the active idea of right and wrong which a man has when thought is passing over into action, that is relied upon as the distinguishing mark of sanity. These words do not mean that a man's responsibility is to be judged by his thorough understanding of the Decalogue, or by his calm doubts as to the existence of a conscience. They mean that we are to judge by means of the principle of action; and we are so far from thinking that it is the intention of the law to make a speculative belief the test of insanity, that we regard these words as indicating an intention to make the capacity of doing or refraining, the power of choice between good and evil, or right and wrong, the real test, and that it shows that such is the intention by the words 'at the time he committed the act.' The question to be left to the jury is not, Does he know right from wrong now—does he possess a conscience? but, Did he, *at the time* he committed the act, know he was doing wrong? At such a time, speculative beliefs go for nothing. A man's closet-code is not that which he takes into the market-place into the strife. We do not judge of a man by what he thinks at home, but by what he does abroad. Are right and wrong present to his mind at the time he acts, or are they absent? If they are absent, his actions cannot be influenced by them: he has no choice. If, then, that absence is due to disease, he is to be regarded as irresponsible. This knowledge of right and wrong, then, is the capacity which a man has, at the particular moment of the deed, of being influenced by motives—the power he has of refraining from the act in question."[1]

[1] See Responsibility and Disease. London: 1872.

[1] Mr. Dudley Field, in an able paper on "Emotional Insanity," which was read before the Medico-Legal Society of New York, and published in the "Albany Law Journal," 3d May, 1873, says: "The question, then, of insanity, in relation to crimi-

§ 14. **This Test in relation to Impulsive Insanity.**—We have seen that some of those who think the test, the nature of which we have been considering, good so far as it goes, are of opinion that it will not be applicable as a test of punishability when the disease is characterised by delusions, or when it is what has been called impulsive insanity. We have shown that it is applicable in all cases of delusional insanity, and it remains for us to consider whether it is applicable in cases where the acts are caused by those hurricane or tornado passions which result from disease, and which are designated irresistible. It cannot, we think, be doubted that such uncontrollable impulses do really occur—that insanity may manifest itself in one who has hitherto appeared sane, in one criminal act, and that it may spend its force in that one act and leave its victim in his right mind. There is no reason for saying that insanity must continue a day, or a week, or a month, to be insanity. A man may be sane this

nal responsibility, is not merely whether the offender is of unsound mind, but whether his unsoundness is of that kind and degree that he would not, according to the general experience and judgment of man, be deterred by punishment from a repetition of the act, if committed by himself, or of committing it, if seen by him to be followed by punishment when committed by others. And all this depends upon the question whether the offender was or was not a free agent; that is to say, whether he acted from compulsion so strong that the fear of punishment could not withstand or overcome it. There must have been freedom of choice between doing and not doing, and capacity to choose. Since the object of punishment is, as I have said, to deter an offender and others like him, and since one can be deterred so far, and so far only, as his act is voluntary, the question of legal responsibility must come to this—was the person accused capable of knowing that the act or omission was a violation of law, and of refraining from it? Was he *capable* of *knowing* and *refraining?* I do not ask whether he *did know*, but whether he was *capable of knowing*. If he was *capable of knowing* and of *refraining*, then he was, in the sense of the law, a free agent. The points to be submitted to a jury are, first, was he *capable* of knowing that what he was about to do was a violation of law; and being thus capable *could* he have refrained from doing it, or, to use a common phrase, 'could he help it;' and I venture to say, that upon these two ultimate questions hangs the decision of the issue of insanity in criminal cases." We cannot but think this refinement as unnecessary as it is ingenious. The real questions of responsibility have to do with knowledge and will. Mr. Field, while he divides insanity into perceptional, intellectual, emotional, and volitional, says he is prepared to maintain that neither perceptional or emotional insanity excuses an act otherwise criminal; and in his conclusions he says: "That intellectual or volitional insanity absolves from criminal responsibility when—and only when—the reason has lost the power of choice or the power of controlling the will." Now this is just the present test of insanity. As to the capacity of knowledge being the question for the jury, we must hold that it is the fact of knowledge which is the question. If he knew, then it is evident he was capable of knowing; and if he did not know that it was wrong and forbidden, and if the absence of that knowledge was due to mental disease, then incapability is to be inferred

minute, insane the next, and sane again the next, just as he may suffer a whole year from disease, have a year of perfect health, and again suffer from disease for another lengthened period. We know that in disease there are flashes of health: there can be no reason for saying that in health there should not be sudden and instantaneous flashes of disease. The difficulty is not in admitting that such impulses may exist, but in proving that acts have resulted from them when they have existed.[1] In this place we have not, however, to do with the difficulty of proof, but with the test of irresponsibility and its applicability to such uncontrollable impulses. If we were right in holding that the test of capacity by means of the knowledge of right and wrong had a distinct and direct reference to the volitional character of the act—if we were right in regarding it as a gauge not of a man's speculative beliefs, but of his volitional faculties, then it follows that it is an excellent test of capacity in relation to this disease, for the very fact that the impulse is irresistible would be at once a ground under this test for exempting the individual from all responsibility and punishment in relation to the act. Speculatively, a man who is compelled to do a thing under fear may be said, even at the time of committing the act, to know right from wrong; practically, he cannot. The man who kills another in self-defence has no speculation in his head at the instant of the death-blow as to the heinousness of murder. All he knows is that there was no help for it: if he had not taken his neighbor's life, his neighbor would have taken his. At that instant, the higher law of self-preservation made him oblivious as to the rightness or wrongness of the act he did. So any one who labors under an irresistible impulse, cannot with any truth be said to have at the instant of such compulsion a knowledge of right and wrong. We hold, then, that this test is a test of the volition as well as the knowledge of the individual—a test of thought passing over into act, which is will; and that consequently no better test of incapacity could be devised in relation to this disease. Prove that the impulse is irresistible, and the law will hold that the individual is irresponsible.

[1] See Fitz James Stephen's Criminal Law of England, p. 94, and Macdonald's Criminal Law of Scotland, p. 15.

§ 15. **The Test further considered.**— It follows, then, from what has been said, that we are, after the fullest examination of the medical opinions on the other side, constrained to hold that the answers of the Judges are a most satisfactory statement of the law, and that no better test of responsibility could at the present time be devised than that which makes knowledge of right and wrong at the time of the commission of the act the means of judging of the punishability of the person who has committed a criminal offence. This will, we think, appear from other considerations to be presently entered upon, but we would wish to quote in this place the words of one physician who seems to have adopted the opinion that the answers of the Judges are satisfactory, and afford an adequate criterion for the ascertainment of responsibility. "Although not a test of insanity," says Dr. Hammond, "the knowledge of right and wrong is a test of responsibility; and by knowledge of right and wrong is meant not the moral knowledge that a particular act would be intrinsically right or wrong, but that it would be contrary to law, or rather the individual need not actually have this knowledge, but, so far as his mind is concerned, he must possess the capacity to have it. * * * Now, any individual having the capacity to know that an act which he contemplates is contrary to law, should be deemed legally responsible, and should suffer punishment. He possesses what is called by Bain[1] punishability. If he does not possess this capacity, then he ought not to go at large, for he is a greater enemy to society than one who with evil intent has nevertheless sufficient reason to guide him."[2] And again he says: "The only forms of insanity which in my opinion should absolve from responsibility, and therefore from any other punishment except sequestration, are such a degree of idiocy, dementia, or mania, as prevents the individual from understanding the consequences of his act, and the existence of a delusion in regard to a matter of fact which if true would justify his act."[3] This shows that some members of

[1] The Emotions and the Will, p. 620. 2d ed. London: 1865.

[2] Insanity in its Relations to Crime, p. 70. By W. A. Hammond, M. D., etc. New York: 1873.

[3] Op. cit. pp. 73 and 74.

the medical profession are beginning to understand the subject, and to comprehend the wisdom of the rules which have been laid down by innumerable Judges;[1] and it contrasts somewhat favorably with Dr. Maudsley's adoption of some of the New Hampshire decisions, which have been repudiated by every other American Judge who has thought it worth his while to notice them, as an advance upon former expositions of the law.[2] The statement of Judge Doe in the case of the State *v.* Pike,[3] that "the legal principle, however much it may formerly have been obscured by pathological darkness and confusion, is that a product of mental disease is not a contract, a will, or a crime,"[4] is quite an incorrect statement of the legal principle. The law, in inquiring whether an instrument is a will, a transaction a contract, or an act a crime, does not care whether these are the result of health or of disease. It knows that no physician, however skilled, can say where health ends and where disease begins. It knows that it is impossible in many cases to say whether certain symptoms indicate morbid or healthy action, and to say whether certain manifestations of mind result from sanity or insanity. That being so, it would be ridiculous for the law to set itself to discover whether the act, the validity or criminality of which it has to determine, was caused by one of a series of occult conditions which nobody understands, and which have been classed under the wide term disease. What it does set itself to do is to ascertain whether the individual knew what he was doing. If he did not, he is not responsible. If he knew what he was doing, and yet could not refrain from doing it, then still he is irresponsible. If the act was the offspring of disease, the law will still ask, could he resist the temptation to the act? If he could, and did not, then he is responsible. It does not follow that because a diseased condition prompts to the performance of

[1] Ante § 10.

[2] See Responsibility in Mental Disease, by H. Maudsley, M. D., p. 105. London: 1874.

[3] 49 N. H. 399.

[4] Perley, C. J., was also of opinion that the question was, "whether the killing was the offspring of mental disease." The rule laid down by Bell, C. J., in State *v.* Wier, quoted in Jones *v.* State, does not advance the law beyond the position it was placed in by the Judges' Answers. 50 N. H. 369.

a certain act that therefore the person must necessarily do it. Each sane man has upon occasions had morbid impulses, insane desires, and he has restrained these and acted in accordance with reason, notwithstanding those suggestions of unhealth. If, instead of exercising his power of self-control, he had given way to such an impulse, would he have been guilty of a crime or not? The insane man is affected in the same way, and in many cases the insane impulse is controllable by his power of will, moral sense, knowledge of right and wrong—call it what you will. If he can, and will not, resist this motive, which is the offspring of disease, he is a criminal, and ought to be punished. It is the possibility of resisting this suggestion which is the object of the law's research, and not its initiation in disease or health. This possibility is, in other words, the power of distinguishing between right and wrong at the time of the commission of the act, and hence the legal test of responsibility. Upon these grounds, we cannot but regard Judge Doe's exposition as entirely erroneous.

§ 16. **Delusion in relation to Criminal Responsibility.**— We have said that in our opinion the test already discussed is applicable in every case, but the House of Lords put several questions to the Common Law Judges, and their several answers are worthy of consideration. The first, which enunciates the principle, that notwithstanding the accused did the act with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to the law of the land, and the fourth, which says that a man laboring under delusion shall be in the same position as to responsibility as if the facts were real, may be taken together; and have been somewhat fiercely assailed.[1] Thus, an American Judge, after asserting that it

[1] The Homicide Law Amendment Bill, which was introduced into Parliament during the present session, (24th March, 1874,) contains the following clause (sec. 24): "Homicide is not criminal if the person by whom it is committed is at the time when he commits it prevented, by any disease affecting his mind,

"(*a*) From knowing the nature of the act done by him;

is a piece of exquisite inhumanity, says: "It practically holds a man confessed to be insane accountable for the exercise of the same reason, judgment, and controlling mental power that is required in perfect mental health. It is, in effect, saying to the jury, the prisoner was mad when he committed the act, but he did not use sufficient reason in his madness. He killed a man because under an insane delusion: he falsely believed the man had done him a great wrong, which was giving rein to a motive of revenge, and the act was murder. If he had killed a man only because under an insane delusion, he falsely believed the man would kill him if he did not do so, that would be giving the rein to an instinct of self-preservation, and would not be crime. It is true, in words the Judges attempt to guard against a consequence so shocking as that a man may be punished for an act which is purely the offspring and product of insanity, by introducing the qualifying phrase, 'and is not in other respects insane.' That is, if insanity produces the false belief which is the prime cause of the act, but goes no further, then the accused is to be judged according to the character of motives which are presumed to spring up out of that part of the mind which has not been reached or affected by the delusion or the disease. This is very refined. * * * No such distinction ever can or ever will be drawn into practice, and the absurdity as well as the inhumanity of the rule seems to me sufficiently apparent without further comment."[1] Curiously enough, the absurdity is not so apparent to us as this

"(*b*) From knowing that it is forbidden by law;

"(*c*) From knowing that it is morally wrong; or,

"(*d*) From controlling his own conduct.

"But homicide is criminal, although the mind of the person committing it is affected by disease, if such disease does not in fact produce some one of the effects aforesaid in reference to the act by which death is caused, or if the inability to control his conduct is not produced exclusively by such disease.

"If a person is proved to have been labouring under any insane delusion at the time he committed homicide, it shall be presumed, unless the contrary appears or is proved, that he did not possess the degree of knowledge or self-control hereinbefore specified."

In the opinion, then, of the draughtsman of the Homicide Act, 1871, the test of the knowledge of right and wrong is sufficient without those which the Judges, in 1843, added with reference to delusion. He makes the proof of the existence of a delusion shift the burden of proof, which seems to us incompetent, and may have been one of the reasons why the Judges reported against the bill. See ante § 10, and note in Add.

[1] Per Ladd, J., in State *v.* Jones, 50 N. H. 369.

Judge seemed to imagine. The first of the above mentioned rules, when taken in conjunction with the second, affords a clear guidance in all cases where partial insanity comes before courts of law. The doctrine that the mind can be diseased in one part without being diseased throughout, is no new doctrine: it was not enunciated by the Judges for the first time in their answers to the questions of the Peers; but it has been held as a doctrine by the medical profession from a very early period, and has been acknowledged by the legal profession since the time of Lord Hale. But the true character of monomania is the localization of disease. A man believes, for instance, that he is pregnant and about to give birth to a child, and he busies himself in preparing baby-linen; but in every other respect he is a sane man. He can express a rational opinion as to political changes; he can make a shrewd bargain; he can read books with comprehension, and behave with urbanity and courtesy to his fellow-men. Although he can reason correctly on all other subjects, and although proofs are not wanting that he is laboring under a delusion as to his condition, no argument will convince him that he is in error. Now, that is monomania or delusional insanity; and the law holds that if a man can carry such an erroneous belief harmlessly amongst his fellows—and there is not a doubt that monomaniacs can—that as on all subjects apart from his delusion he is a rational being, he is to be treated as what he is. Supposing such a man with slow malice, and hungry greed for the money which would accrue to him upon the death of a relative, administered poison from day to day, so as to simulate the recognized symptoms of a known disease, would there be a shadow of a pretence for saying that he was to be held irresponsible on account of his diseased belief that he was with child. So, if a man, who is on all occasions civil to those who are about him, upon one occasion believing falsely that some friend or neighbor has spoken discourteously with regard to him, revenges himself by murdering that other, although he is well aware that murder is forbidden by the law of the land, can it be argued with any show of reason that he is to be held exempt from punishment on the ground that he believed

falsely that he had been maligned.[1] It may, however, be said the delusion that his neighbor backbit him is only a part of his morbid belief. Doubtless, there are other delusions, or if not, his power of self-control is altogether debilitated. If that were so, there might be something to be said in favor of exemption from punishment, but such an illustration is impotent as against the principle enunciated by the Judges, for that principle is guarded by the words, "and is not in other respects insane." This points, then, to a simple case of monomania, and the rule that the nature of the delusion is always to be considered in relation to the nature of the act, that when the facts which are falsely believed are such as would, if they had really existed, have justified the act, the act shall be justified, and when they are such as, even supposing they were true, would not have justified the act of which the prisoner is accused, then his act is criminal, seems to us to be open to none of the objections which are urged against it.[2] Another illustration will perhaps make the scope of the last of these rules more clearly understood. If their scope is once thoroughly understood and associated with the real facts which characterize monomania, and which will fall for consideration in another place, the excellence of the rule cannot fail to impress itself. Thus, [17] if a man is under the impression that another is attempting to take his life, and if it can be shown that any act upon the part of the latter—taking into consideration the form of the manifestation of the insanity—was calculated to induce the former to believe that his death was really compassed, and he thereupon kills the man, as he supposes in self-defence, in that case he would be exempt from punishment; or where a man is under the belief that his wife is unfaithful to him, and he kills her supposed paramour under the influence of insane jealousy, in this case, it would appear that the [18] homicide would amount only to manslaughter, and not to murder. If, on the other hand, a man believed that a neighbor had insulted him, and it could be proved that the individual was not in other respects insane, and, in consequence of this de-

[1] See the case of Bryce, (High Court,) 30th and 31st May, 1864, 4 Irvine, 506.

[2] This rule has been acted upon in Scotland. See Whelps, (High Court.) 25th July, 1842, 1 Broun, 378.

lusion, the individual killed his neighbor in revenge for the supposed insult, he would, according to our law, be liable to punishment. Now it seems to us, remembering that the law is not merely a committee for the lunatics who live under it, but is, as it were, the trustee for the whole community, and that its duties to sane men are not less important, nay—seeing that, as yet, sane men are more numerous than insane men—much more important to the sane than to the insane members of the community; that the law, as it stands at present with regard to the responsibility of individuals under the influence of an insane delusion as to existing facts, is satisfactory. It seems to us, however, that in all cases the existence of such delusions should be taken into consideration in reference to the question of malice and provocation, just as drunkenness, which is not a defence on a criminal charge, may be taken into account in ascertaining the intention with which the act was done. Such a delusion as is here meant (one to produce a public benefit, etc.) could not be such as to warrant the commission of the crime, but it might be such as would to some extent be an excuse for it. This doctrine is not anywhere laid down, but we submit it with some confidence that in the event of necessity arising, it would be adopted.

§ 17. **The Reasons for regarding certain Insane Persons as Irresponsible.**—We said above that the satisfactory nature of the existing tests of insanity would appear from other considerations, and we are now in a position to consider the true nature of crime, the real object of punishment, and having done so, to point out why the insane should not be subjected to the penalties of the criminal law. It is laid down in our criminal law books that a wrong intent, or something equivalent thereto, is an essential element in crime, and there is no word, the meaning of which it is more important clearly to understand, than the word "intention" in its relation to the criminal law. "Intention" in this relation is not simply purpose or design. It is clearly distinguishable from motive, which is, as it were, the goal of an action. Yet, while it is distinguishable, it is not always distinguished. The fact that the motive which led to the commission of a

certain act is one of the most prominent points in the proof of the intention, has only too frequently produced some confusion of thought. But it must be remembered that it is the "intention" and not the "motive" which gives in law the character and quality to an act. [10] And it is essential to bear in mind the fact, "that the intention to do the act exists for all criminal purposes where it is wilfully done, although the act itself was merely the means of obtaining some ulterior object."[1] For example, if a man removes a piece of property from another's house without the consent of the owner, with the intent to convert it to his own use, and thereby despoil the owner of it, in that case he is guilty of theft. If, however, he takes it, believing it to be his own, or with the intention of returning it anon, he commits a trespass, but is not guilty of theft. And if he takes it in a case where he is justified by law in so doing, as in distress for rent due by the owner of the article, he is not guilty of theft, neither does he commit a trespass. In each of these cases the act done is the same, the motive is identical, but the intention varies the legal consequences of the act, and it is by the intention that the question whether the individual has subjected himself to civil or criminal consequences, or whether he shall be regarded as altogether innocent, must be decided. In certain cases, however, the statute law[2] has declared that such and such acts shall be criminal, and has associated with a proof of the commission of the act certain penalties. In such cases an inquiry as to the intention of the party is not of the same primary importance. In another class of cases the legislature has thought it prudent to declare that there shall be a presumption of criminality associated with the commission of the act, and in that way throws upon the party proved to have committed the act in question, the *onus* of proving that it was done with an innocent intent. In the third class, however, the intention of the individual is of the most material importance, and, in order to secure a conviction, the criminal intention must be satisfactorily proved. It was laid down by Lord Mansfield as generally true[3] that, where an act in itself indifferent, if done with a particular

[1] Cr. L. Com., 4th Rep., p. 15. [2] Sec. 24 and 25 Vic., c. 96, sec. 58.
[3] R. *v.* Woodfall, 5 Burr. 2667.

intent, becomes criminal, there the intent must be proved and found by the jury; but where the act is in itself unlawful, the proof of justification or excuse lies on the defendant, and in failure thereof the law implies a criminal intent. A "guilty mind" is, however, as we have seen, essential to the conception of a crime in a very large class of cases;[1] and a [11] "guilty mind" is said to be present in every case of intentional or voluntary wrong where the mind is actively in fault, and also in those cases where the mind, although not actively in fault, is yet the cause through its passivity—it may be by neglecting to exercise sufficient caution—of some hurt or damage. Having considered the meaning of the word "intention" as understood in law, we return to the statement that a wrong intent is an essential element in crime, and the question is, as to how this intention is to be proved. In our law the jury are justified in inferring the intent from overt act, because every man, as well in criminal as in civil[2] procedure, must be taken to have intended that which is the necessary or natural consequence of his act; and, said Lord Ellenborough, Chief Justice,[3] "When a man is charged with doing an act, of which the probable consequences may be highly injurious, the intention is an inference resulting from the doing of the act." And Littledale, J., has laid down the principle that if a result be the probable consequence of an act, the doer is answerable as if it were his actual object. "If," he went on to remark, "the experience of mankind must lead any one to expect the result, he will be answerable for it."[4] It is quite evident that a man's motives and intentions, which are hidden things, can only be inferred from his acts and words. Acts are the language of motives, as words are of thought. It is, of course, impossible to punish mere intention, and it is only when the intention becomes, as it were, the fœtus of the act, in an attempt, that the law can take cognizance of it. The statement of the proposition, that the criminal law looks mainly to the inten-

[1] See Reg. *v.* Thomas, 1 Leigh & C. 313.

[2] Per Cresswell, J., 12 C. B. 98; per Jervis, C. J., Id. 103, cited Arg. 8 Exch. 229.

[3] R. *v.* Dixon, 3 M. & S. 15; R. *v.* Philp, 1 Moo. C. C. 263, 274; Reg. *v.* Hill, 8 Car. & P. 274. See Broom's Com., p. 866, *note*.

[4] R. *v.* Moore, 3 Barn. & Adol. 184, 188.

tion which actuated the accused, has been said[1] to "imply the presumption that the individual whom it is sought to bring within the operation of the law has mental capacity, is a free agent, and possesses the power of electing to abstain from what is forbidden rather than suffer the [12] consequences of offending;" and the criminal law of England therefore declines to punish where the actor, from want of understanding or mental disease, is not in a position to choose freely; and it might probably be added, where, through such enfeeblement or derangement, motives have lost their power of making a man choose the good rather than the bad, and the pleasant rather than the disagreeable.

§ 18. **Principle of Law illustrated.**—It is the same principle that induces the law to exempt very young children from the criminal responsibility of their acts; and the same principle is to be found as the reason for the non-infliction of legal penalties where the individual is, against his will, compelled to do a wrongful act, inasmuch as the dread of distantly future penalties cannot in reason be expected to prevail against the fear of present suffering. Were it more generally understood—were it more thoroughly appreciated—that it is really the same fundamental principle which induces the law to forego its penalties, even after proof of the criminal act done in these two classes of cases, less difficulty would undoubtedly arise in practice as to what amount and what kind of insanity is sufficient to establish a claim to immunity from punishment. Were it once held that the proof of that amount of insanity would relieve from the consequences of a criminal act which deprives the individual, either by amentia, dementia, or mania, of that amount of free will or choice—of that power to balance and appreciate motives which is found in the ordinary ranks of mankind—were it held that the amount of insanity which deprives a man of this, as the amount of duress which deprives a sane man of the same power—would relieve an individual of criminal responsibility, no doubt could, it seems, in any case arise. In the examination of a case where duress is pleaded, as in

[1] Broom's Com., p. 869.

the case of a crime committed by a *feme covert*, acting *sub potestate viri*, as an excuse for criminal misconduct, special circumstances may be given in evidence to repel or support the presumption of coercion. In a case of alleged insanity, then, if the individual suffering from enfeeblement of intellect, delusion, or any other form of mental aberration, was looked upon as, to the extent of this delusion, under the influence of duress (the dire duress of disease), and in so far incapacitated to choose the good and eschew the evil, in so far, it seems to us, would the requirements of the law be fulfilled; and in that way it would afford an opening, by the evidence of experts, for the proof [13]of the amount of self-duress in each individual case, and thus alone can the criterion of law and the criterion of the inductive science of medical psychology be made to coincide.[1]

§ 19. **The Objects of Punishment.**—It is to be remembered that the aim and object of punishment is *to deter;*[2] and it will be useless, with regard to its end as looked at in relation to others than the criminal himself, if they through mental defects are unable to appreciate its meaning and nature, or are coerced by some overruling principle which is equivalent to the overmastering dread in the definition of duress. In similar cases the punishment will, of course, fail—except in the case in which punishment, once for all, deprives of all power to exercise the will—in its second end or object, according to Beccaria, that of deterring the criminal himself from again committing the same crime. But to say that in no case of insanity will the fear of punishment or the hope of reward deter the criminally-disposed lunatic from committing a crime, is to say what is denied by the experience of every director and superintendent of the insane throughout this country, who are in the daily habit of enforcing a code of discipline with the view of maintaining internal order in

[1] Lord Holt, in the case of Thompson *v.* Leach, (3 Mod. Rep. 301,) in speaking of the old maxim of the law that a man was not allowed to stultify himself by pleading insanity, in an action on a contract, said: "It is unaccountable that a man shall not be able to excuse himself by the visitation of Heaven, when he may plead duress from men to avoid his own act;" thereby identifying the principle of the plea in both instances, as regarding insanity as equivalent to the want of free agency produced by fear.

[2] Beccaria Cr., cap. 12.

the establishments under their control; and to assert what no one in this country who has the least knowledge of the subject will believe—viz., that mental unsoundness is incompatible with crime. Indeed, cases come every day under the cognizance of those who have to do with the insane, in which the criminal act is entirely beyond the sphere and influence of the reigning delusion, and, accordingly, in so far as that delusion is concerned, the product of a sound mind.

§ 20. **Punishment considered.**—The meaning, then, of punishment as a deterrent seems to us to be to supply stronger motives to those who do not find the repulsion of vice and the allurements of virtue sufficiently strong to force them from paths of violence and aggression into paths of peace and good-will to their neighbors. It seems to us unnecessary to consider the question whether the ideas of right and wrong were due in their inception to the experience of rewards and punishments—whether the moral sense is the inheritance of the past experience of disagreeable consequences resulting from conduct which was productive of mischief to one's fellows, and the cognate experience of reward and pleasure as the consequents of a course of conduct which resulted in the happiness and welfare of one's fellows. All the pains of our ancestors have doubtless contributed to our comfort, and the enforced obedience to the laws in old times may have become habitual in the race, and observable in our consciences of to-day. These are interesting speculations, and there is a great deal to be said for this theory of morals, and at any rate nothing to be said in denial of the proposition that even supposing this was not the only thing that went to the formation of current virtue, it must have had much to do in strengthening the position of virtue and undermining the stronghold of vice. Make virtue more profitable than vice, and you will do much to induce those who would have adopted crime assume probity. Now, the ordinary motives being insufficient to induce certain persons to do well simply upon hereditary instinct, as was proved by the fact that crimes were still committed, it was necessary to continue the process which had gone to the formation of a moral sense. It was necessary that the harmless should be

protected from harm—necessary that the harmful should be prevented from doing mischief. This was, according to the view of all governors throughout the world, savage and civilized, to be effected by means of holding out extra inducements to the evily-disposed to refrain from aggression; and as protection was a sufficient reward for virtue, punishment was to be the reward of crime. Punishment is only, then, the motive which government supplies to induce, or, to use a stronger word, compel those who are evily-disposed to do well. As a man can only be affected in his property or his person, penalties have taken the form of fines and of bodily pain. Every one, then, who can be made to do better in future by the infliction of punishment, is punishable: every one who can be restrained from doing ill by the fear of penalty, is liable to punishment. We have already pointed out the fact that a large number of persons who may undoubtedly be called insane from a medical point of view, can be deterred by the dread of punishment. It cannot be denied that persons suffering from delusions are amenable to the influence of ordinary motives, [15]and to say that such men could in no way commit crimes—to say that the existence of epilepsy would render the victim of *petit mal* irresponsible for his act in case he forged or stole—and some medical men have gone so far as to hazard assertions of a similar kind—is as absurd as to demand that all criminals shall be looked upon as under the influence of diseased organism, and that they should be treated with the leech or the lancet, or any system of medicine that may for the time being be in vogue, rather than with the tread-wheel or pillory. We cannot get ordinary common-sense people to believe that every man steals just because he cannot help it; indeed, on the other hand, they are inclined to believe that if they threaten to knock a man down, and have the power to carry that threat into execution, if he attempts to steal their watch again, that the thief's organism will not force him to make the attempt. They believe that it is possible to supply motives to those people who do not see that it is for their [16]own interest to respect their neighbor's feeling and property, and that government, as the motive administrator, can, in most cases, give considerable security by this means to life and property.

And, strange to say, the principle of the law in declaring certain punishments with the view of preventing mischief—which is ultimately reducible to pain—is precisely the same as that which actuates those pig-headed people who are guided by common sense. Now, it has seemed reasonable to the law that, seeing that the insane are really, for many purposes, sane—and we are told by medical men of lunatics with whom you may converse for hours without discovering the fact of insanity, and these lunatics are evidently for the purpose of the said conversation sane—we say, it has seemed reasonable to the law that as lunatics are sane for many purposes, they should for those purposes be looked upon as sane, and treated accordingly. Our conclusion therefore is, that responsibility or punishability may be defined as the knowledge that certain acts are permitted by law, and that certain acts are contrary to law (right and wrong); and combined with this knowledge, the power to appreciate and capacity to be moved by the ordinary motives which influence the actions of mankind. And we are further of opinion that this mental state can be satisfactorily tested by the rules of law which have been stated above; and in bringing to a conclusion what we had to say with reference to the responsibility of the insane, we may say that if a man [21]has no sense of pain, he will not learn to dread the fire by being burned. If it is the same to a man whether he take asafœtida or sugar into his mouth; if it is the same to him whether his neighbors praise or disparage him; if it is the same to him whether he have or have not liberty—then any of the laws that are at present in force in this and in other civilized countries are utterly inapplicable to him, and, as they do not apply to him, he is not responsible to them. But if a man, be he sane or insane, is capable with regard to the act in question of being deterred by fear of punishment—if, like the ordinary criminal, it was a belief in the probability of escaping detection that weighed on the side of committing the act—if it was mainly the ordinary motives which led to the commission of the crime, and if a preponderance of ordinary motives would have deterred—then the criminal laws of this land are applicable to the accused, and he is responsible to those laws, and has no claim to be exempted from punishment on the ground

of mental enfeeblement or derangement of intellect. It is to be remembered that a criminal code has been made with reference to those who are in many respects defective human beings. Certain penalties have been declared as the consequences of certain acts, and it is to be remembered that the law is excellent only where, with its punishments, it emphasizes the assertions of Nature. Laws are for those who cannot see that their truest good lies in order; for those who are incapable of appreciating the fact that honesty and virtue and peace are the conditions of the greatest possible happiness. The wise man would not steal, whether there were a statute-book or no. The good man has a hundred motives for respecting the life of his neighbor besides the fear of a shameful death. But while the statute law supplies certain powerful and easily appreciated motives to guide the actions of those who are so weak as not to see what is for their real advantage—of those who have so little self-control that, without the fear of immediate punishment, they could not respect the property of their neighbors—it does not, after prescribing one set of punishments for such classes, make, as it were, a second story of the statute-book, and prescribe other punishments for those who, even with the motives supplied by law, are unable either to see what is best for them, or unable to [22]restrain their desires, although conscious that punishment will follow. It confesses that there are certain classes to whom the law can supply no motive sufficiently strong to induce them to conform to certain rules, and it looks upon those persons as insane and as irresponsible; as punishment of those individuals would fail first in reforming the criminal himself; second, in deterring others of the same class from committing a similar offence: although it might, as an example, deter others, the law does not punish such persons, but contents itself by protecting the community from the commission of the crime again by the same individual.[1]

§ 21. **Proposed Graduation of Responsibility.**—Every one who has made even the crudest observation of his fellow-

[1] "There is scarcely any man," says Grotius De Jure Belli et Pacis B. II., c. xx., § 29, "wicked for no purpose. If there is any one who loves wickedness for its own sake, he proceeds beyond the bounds of human nature."

men must have become cognizant of the fact that capacity varies infinitely. From a Shakespeare to a village idiot there are a million degrees of mental acuteness and mental power; indeed, no two men born into the world were ever similarly endowed. There is the same marked graduation of the mental ability and rational power among the insane. Not only do they differ in the first instance in sane capacity, but their insanities differ the one from the other, and would, had they possessed equal power in the first instance, introduce infinite varieties. Now, [14] the law has been censured much and often because it has refused, provided a man be *non compos mentis*, to measure the degree of his capacity. And yet the difficulty of measuring every man's capacity, and the rigorous adjustment of the punishment to the amount of criminality, is so great—nay, so thoroughly beyond the power of any tribunal—that the law has very properly refused to attempt to gauge guilt and accurately apportion punishment. When the legislature determines that a certain punishment shall be associated in all cases with the proved commission of a certain crime, to demand the weighing out of a so-called justice as we weigh out pounds of sugar, is absurd. When law says a man shall be hanged by the neck till he is dead, and two men, A and B, suffer this extreme penalty of the law, is that the same punishment to A, who has just come into life with a million possibilities which the incubating future may hatch, and to B, whose possibilities have turned out addled? But it is well to recognize the fact that no human institution is absolutely perfect, and that it would be ridiculous to expect the law to do absolute justice. Is it not for Heaven to do justice? Is it not for the law to prevent crime? And the way to do so is not to attempt to apportion punishment to every individual crime, but to prescribe a certain penalty as an all-sufficient motive to keep all sane men from the commission of the crime in question. Because A is a man with a calibre infinitely less than that of B, he is still in law held to be bound by his contracts, responsible for his acts, and may exercise all the privileges vouchsafed to a citizen of the State to which he belongs. That there is a higher law which demands greater probity from the one than from the other—that there is a higher law which makes the true

responsibility of [15]the latter greater than that of the former, and renders the privileges of the one who has the capacity of higher enjoyment infinitely greater than those of the other—may be true; but that such law is not the law of England is a fact, and that, even if it were possible, it is well that it should not be the law of England, is quite capable of proof. While it is admitted that gratitude and charity, kindness and goodness, are of the highest importance to the welfare of the individual and the community, yet, even by the equity jurisprudence of this and of every other civilized nation, they are left to be enforced *in foro conscientiæ*, upon account of the difficulty of framing any general rules to meet matters of that kind, and from the mischief and inconvenience which would arise from attempting to enforce such duties. From similar reasons, and for the paramount reason that laws are for the prevention of mischief, the legislature has refused to graduate responsibility; and he alone, in the estimation of our criminal law, is irresponsible who is *non compos mentis*.

PART II

§ 22. **The Capacity of the Insane—Wills.**—Sir James Hannen, in the recent case of Boughton *v.* Knight,[1] after quoting the words which Chief-Justice Tindal used in delivering the opinion of the Judges as to criminal responsibility which has been above alluded to—which words were as follows: "It must be proved that at the time of committing the act the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong"—said: "Now that, in my opinion, affords as nearly as it is possible a general *formula* that is applicable in all cases in which this question arises, not exactly in those terms, but in the manner in which I am about to explain to you."[2] We think it well

[1] 42 L. J. P. 25; 28 L. T. 562.

[2] In the case of Kinne *v.* Kinne, (9 Conn. 102,) the Court said that the same rule should be applied to the question of testamentary capacity which is applied to that of responsibility for crime; namely, that although the prisoner may be laboring under partial insanity, if he still understands the nature and character of his act and its consequences, and has power to apply that knowledge, such partial insanity is not sufficient to exempt him from criminal responsibility. (Commonwealth *v.*

that the principle which the law applies to its treatment of criminals who are irresponsible through mental disease should be understood to be the same as that which it applies to the disabilities which those persons labor under who are deprived of capacity by mental derangement. This fact has not been appreciated, and its want of appreciation has led to some confusion and misunderstanding. The question in connection with crime is, Does the accused know what he is about, and can he refrain—has he capacity to choose one course rather than another? that in connection with testamentary disposition is, Did the testator know what he was about, and had he power to will this disposition? The questions of fact which are associated under the phrase, "know what he was about," are in these two cases very widely different. In the one, the man, to understand what he is about, (say in murder,) must appreciate that that is a human being who is opposite to him; that it is a knife which he holds in his hand; that a knife will cause a wound, and that certain wounds result in death: he must know what actions he is actually performing; that he is raising his hand and arm; that he is exercising his strength to strike home, and the like. If he knows none of this, then it may be truly said that it was not he who committed the act, any more than it was the knife, but that they were both instruments in the hands of disease. In the other, the man must understand that he has a house, or lands, or money, and something about it, that he has the power of disposing of these by will, which is an instrument of the law by which the wishes of testators are given effect to after their deaths: he must know that he has or has not relations: he must, if he has relations, know who they are, and know and remember something of his relations to them, and of their claims upon his memory, affection, and bounty. If he has none of this knowledge, then, although he may sign his name to an instrument pretending to be a will, and purporting to be a disposal of his property, it is no will of his, any more than it is the will

Rogers, 7 Metc. 500. See also Comstock *v.* Hadlyne, 8 Conn. 265.) But see McTaggart *v.* Thompson, 14 Penn. St. 149, where it was decided that a less degree of imbecility is necesssary to invalidate a will than would be ground of acquittal from a criminal charge.

of the pen with which he attached his signature. It is evident that will or volition—the expression of which is found in a testament—presupposes knowledge or cognition. It is absurd to say that a man wills that another person of whose existence he is at the time ignorant shall have a piece of property, which at the time he does not know he possesses. Our idea of will is that it is thought or knowledge becoming active or passing over into act. An illustration, which we have made use of before, will serve to make this matter clear. Natural philosophers are in the habit of distinguishing two kinds of energy—potential, and kinetic or actual. Thus, when you wind up a clock, you raise the weight, and are storing up in it a certain amount of potential energy which will be changed to actual energy as the weight falls and turns all the wheels in the timepiece. Now, thought may with some accuracy be likened to potential energy, and will to kinetic or actual energy, or to change the simile to a metaphor, thought may be called potential will, or will kinetic, or actual thought. This, then, shows the necessity for making knowledge of affairs, of property, and of friends and relations, a prerequisite to will-making. A man without knowledge cannot will.

§ 23. **The Degree of Capacity required for Will-making.**—The difficulty in relation to the irresponsibility of the insane for criminal outrages arose in connection with the question of the amount of mind which was required to enable a man to appreciate his position or know what he was about, and with the question as to how the controlling power of will was to be ascertained. A similar difficulty has to be encountered in connection with the subject of testamentary capacity. How are we to ascertain the degree of capacity which will enable a man to form correct conceptions in regard to his property and affairs; what memory is sufficient to give faithful reminiscences of one's friends and relations, and of the claims that these may have in virtue of affinity, service, affection, or the like, upon one's generosity. Very different views have been taken in courts of law with reference to the comparative difficulty of making a valid will and of entering into a binding contract. Some Judges have maintained that the degree of mental capacity required for

the disposal of our property by will must be much greater than that which is required for a transaction of barter.[1] Others have held quite as decided an opinion that a will being a matter which a man may plan and think over at leisure; a matter the duties of which his whole life has been teaching him; a matter which may be postponed from time to time, so that the most favorable opportunity for its execution may be secured, is a comparatively easy affair; and that a contract which may have to be entered into on a sudden, with the distracting importunities of the person who bargains on the other side, which has to be effected with one whose interests are opposed, and who may take every means of endeavoring to overreach, is a much more arduous affair, and requires a much greater degree of mental soundness.[2] However, although there has been difference of opinion as to the relative difficulty of these two acts, there has been no want of uniformity in the dicta of the Judges with regard to what constitutes testamentary capacity. It has been held that this is a thoroughly practical question, one which the common sense which men learn from their everyday experience of the world and the doings of their fellows, would enable them to answer. Each man reasons of his neighbor's capacity from his own. And in twelve average men, one gets a very fair average of the common sense of mankind generally. Now it is just this everyday understanding which would enable men to say whether a testator had enough of sense to know what he was doing, and enough will to give effect to his wishes in relation to the things that belonged to him. Now this is, as we have seen, the rule that has been laid down in relation to the power of making a will, and it is a rule which has been almost universally acted upon. As we shall see when we come to inquire more minutely into the symptoms of the various kinds of disease which come under the notice of the medical jurist, there are many cases in which the mind is almost like the blank sheet of paper which Locke

[1] Per Sir James Hannen, in Boughton *v.* Knight, 42 L. J. Prob. 25.

[2] Hogg *v.* Macgill, 8 March, 1828, 4 Mur. 449; Campbell *v.* Davidson, 14 March, 1827. 4 Mur. 179; Newhouse *v.* Godwin, 17 Barb. 236; Terry *v.* Buffington, 11 Ga. 337; Kirkwood *v.* Gordon, 7 Rich, 474; Dornick *v.* Reichenbach, 10 Serg. & R. 84; Heister *v.* Lynch, 1 Yeates. 108; Stevens *v.* Van Cleve, 4 Wash. C. C. 262.

figured it prior to the photography of impressions; cases in which the individual is utterly careless as to property, and has none of the feeling of proprietorship; cases in which the individual is so wrapt up in self that he cares nothing for friends or relatives; cases in which the wild incoherence of thought makes it impossible for the individual to fix a shooting attention for two consecutive instants on the same thing; cases in which the individual has, through disease, formed perfectly erroneous conceptions of his possessions—in which he believes himself the possessor of millions and millions of money, of chariots of gold and the like, although his whole possession may be limited to a pittance. In all such cases, it is scarcely necessary to say, the individual is not in a condition to form a correct opinion of his position, and at the same time in a frame of mind to influence the distribution of any property he may possess by an expression of volition. But there are many cases where mental health is slightly impaired; where the haleness and strength of middle life are somewhat diminished; where old age has caused a certain dilapidation of the mental structure; where there are curious mental eccentricities of thought and action; and in all these cases, if the individual retains sufficient of the reproductive faculty to collect in his mind, without the suggestions of others, the particulars of the business in hand and the possible objects of his bounty; if he has the power of retaining these in his mind for a sufficient length of time to perceive their relations to one another, and if he is able to form a sound and rational judgment with respect to them, then he is, according to law, in a position to exercise this privilege of disposing of his own property.[1] True, this seems

[1] Harwood *v.* Baker, 3 Moore P. C. C. 282, 290; 1 Wms. Exs. 37; Herbert *v.* Lounds, 1 Ch. Ca. 24; 1 Dyer, 72 *a* in Marg.; Right *v.* Price, 1 Doug. 241; Ball *v.* Mannin, 3 Bligh, N. S. 1; S. C. 1 Dow & Clark, 380; McDiarmid *v.* McDiarmid, 3 Bligh N. S. 374, per Sir John Nicholl, in Marsh *v.* Tyrrell, 2 Hagg. 122, and in Ingram *v.* Wyatt, 1 Hagg. 401; Constable *v.* Tufnell, 4 Hagg. 465; Sloan *v.* Maxwell, 2 Green Ch. 572; Turner *v.* Cheesman, 15 N. J. Ch. 243; Whitenack *v.* Stryker, 1 Green Ch. 11; Van Alst *v.* Hunter, 5 Johns. Ch. 158; Den *v.* Johnson, 2 Southard, 454; Lowe *v.* Williamson, 1 Green Ch. 82; Burger *v.* Hill, 1 Bradf. Sur. 360; Blanchard *v.* Nestle, 3 Denio, 37; Clark *v.* Sawyer, 2 Comst. 498; Horne *v.* Horne, 9 Ired. 99; McTaggart *v.* Thompson, 2 Harris, 149; Gass *v.* Gass, 3 Humph. 278; Kinne *v.* Kinne, 9 Conn. 102; Comstock *v.* Hadlyme, 8 Conn. 265; McClintock *v.* Curd, 32 Missouri, 411; Parish *v.* Parish, 42 Barb. 274; Snow *v.* Benton, 28 Ill. 306; Van Guysling *v.* Van Kuren, 35 N. Y. 70.

a rational rule, and one which is likely in most cases to secure the object which the law had in view, viz., that only the instrument which is the true expression of the testator's rational and personal will should be given effect to as his testament.

§ 24. **Testamentary Capacity in relation to Delusions.**— But there are, as we have already seen, a class of insane persons who although they are not really ignorant, from lack of memory or understanding, of the nature of the property they possess, or of the claims of friends and relatives upon them, are undoubtedly insane in relation to certain subjects. A man's conduct, which is the sphere of law, has a wide scope. His doings and transactions, his businesses and his pleasures, are very various. He meets the world, so to speak, in various ways. He is endowed with various senses. He has various organs, each of which subserve separate uses, and he has various faculties, which have very diverse functions, the one from the other. Thus, it is usual to speak of the cognitive and the conative, and faculties of thought and feelings. A man sees, perceives, apprehends, judges, reasons. And there is the common faculty of memory, which is associated with each of these. Then there are feelings of hatred, envy, love, malice, fear, anger, and the like. Each of these faces of mind has a different relation to the world of sense, and just as a disease of the eye may distort or discolor images which fall upon the retina, without in any way affecting the sense of hearing, so may a disease of brain which affects one of these faculties or feelings, distort some particular class of subjects to the mind without influencing the correctness of its knowledge and the justness of its judgment in relation to other things. One thing, however, is to be remarked in reference to this matter, and that is, that all diseases of feeling are associated with a certain aberration of the cognitive faculties. A delusion is always a belief, and a belief is only a feeling of certitude which accompanies some of our cognitions. Were this not the case, the error which is entertained in a delusion would be dislodged by proof. But that is the very quality of a delusion, that in relation to it the mind seems shut to the reception of evidence. A delusion has indeed been thus de-

fined, and for all practical purposes, the definition is good enough: "The true criterion," says Sir John Nicholl, "is where there is a delusion of mind there is insanity; that is, when persons believe things to exist which exist only, or at least in a degree exist only, in their own imagination, and the non-existence of which neither argument nor proof can convince them, they are of unsound mind."[1] It cannot be doubted that when a delusion exists, the mind cannot be said to be sound, if soundness be taken to mean completeness, wholeness, entirety; for it is evident that, in relation to the insane belief, the mind is unsound. But the question whether the existence of a delusion in the mind will necessarily negative the idea of the possession of a "sound mind, memory, and understanding," as these words are used in the court of probate, is quite a different question, and the answer to it does not follow so directly from the answer just given as might be supposed. The object of the law in all cases where the validity of a will is the question in dispute is, as we have seen,[2] to discover whether the individual was in a position to exercise a rational act of volition; whether, to extend that expression, he knew what he was about, and was able to form and express wishes with regard to the disposal of his possessions. But the law has not said, no man who is not in the prime of life shall make a will; it has not said no one whose mind has suffered any diminution of strength shall not make a will; it has not said no one who entertains wrongheaded notions, capricious whims, stupid prejudices, and the like, shall not make a will. It has not said any one of these things. It has not defined disability, except by saying that he only who knows what he is about shall be in a position to dispose of his property in this way. That being so, it follows that the soundness of mind, as used in this court, does not mean the soundness and entirety of mind which would be understood by the term if used in a philosophical sense. In law, then, if he has enough mind to do this thing rationally and willingly, he has a sound mind. Now, can a man with a delusion make a

[1] Dew *v.* Clark, 3 Addams, 79. In the same case he said: "One of the counsel (Dr. Lushington) accurately expressed it: it is only the belief in facts which no rational person would have believed, that is insane delusion."

[2] Ante § 23.

rational will—can he know and appreciate his property—can he remember his relations and friends, and can he give due weight to the duties of his situation and to the claims of his friends and neighbors? Experience has taught us that in some cases he undoubtedly can do so, and that in other cases he cannot. Some delusions must affect and color a man's whole intellectual life, while others may be entertained as innocuously to his business and social relations, as a sane man may carry a mole on his leg. Suppose that the only sign of morbid mental action is a belief that the sun does go round the earth, will that affect—can it necessarily or possibly affect a man's family relations, intercourse, and duties? While the world believed it, not as a delusion but as a mistake, did it influence the business connections of men, and did it render the descent of property wayward, unnatural, or irrational? On the other hand, if a man takes an unfounded dislike to the only relative he has in the world, one who, instead of deserving hatred, has done everything which under ordinary circumstances is requited with affection and love;[1] if he believes that his daughter, son, or wife, is in the habit of administering poison with every meal; that they are in the habit of measuring him for his coffin, and entertains like delusions; if he makes a will and gives all his property to a charity for which in life he has shown no interest, or to a friend whose acquaintance he did not seem to prize, is it not evident that the delusions have influenced the disposition, and that, in virtue of that influence, it is not really his will any more than the testament of a sane man who intended to leave his property to his daughter, but who by fraud was induced to believe that she was dead, and left it to quite another person, would be his will. He did will this undoubtedly, but it was only because the real state of the case was kept from his knowledge by the deceit of a third party. So in the case of the insane man, the real state of the case has been kept from his knowledge by disease. This must, we imagine, be held to be the law upon this subject, although there have been differences of opinion. Thus, Lord Penzance said: "A per-

[1] This was the case in Dew *v.* Clark, 3 Addams, 79.

son who is affected by monomania, although sensible and prudent on subjects and occasions other than those upon which his infirmity is commonly displayed, is not in law capable of making a will. * * * For I conceive the decided cases to have established this proposition, that if disease be once shown to exist in the mind of a testator, it matters not that the disease be discoverable only when the mind is addressed to a certain subject to the exclusion of all others, the testator must be pronounced incapable. Further, that the same result follows though the particular subjects upon which the disease is manifested have no connection whatever with the testamentary disposition before the court."[1] On the other hand, in the case of Banks *v.* Goodfellow,[2] the Court of Queen's Bench held that delusions which are in no way likely to influence the testamentary disposition, delusions which in point of fact have not, so far as can be seen, affected the provisions of the will, are not fatal to its validity. "No doubt," it was said, "when the fact that the testator has been subject to any insane delusion is established, a will should be regarded with great distrust, and every presumption should, in the first instance, be made against it. When insane delusion has once been shown to have existed, it may be difficult to say whether the mental disorder may not possibly have extended beyond the particular form or instance in which it manifested itself. It may be equally difficult to say how far the delusion may not have influenced the testator in the particular disposal of his property; and the presumption against a will made under such circumstances becomes additionally strong where the will is, to use the term of the civilians, an inofficious one—that is to say, one where natural affection and the claims of near relationship have been disregarded. But where in the result the jury is satisfied that the delusion has not affected the general faculties of the mind, and can have had no effect upon the will, we see no sufficient reason why the testator should be held to have lost his right to make a

[1] Smith *v.* Tebbitt, 1 L. R. P. 398, at p. 401. See also per Lord Brougham, in Waring *v.* Waring, 6 Moore P. C. C. 349. See Dr. Ray's Essay on The Angel Will Case, in his Contributions to Mental Pathology, p. 345.

[2] 5 L. R., Q. B. 549.

will, or why a will made under such circumstances should not be upheld."[1] We cannot but think that this statement of the law is much more correct than that which we have quoted from Lord Penzance. It is more in conformity with the policy and principles which have been developed in the criminal department of jurisprudence, and which have already been considered. We saw that an insane person was to be held guilty if he did a criminal act which was altogether dissociated from and uninfluenced by his diseased belief. If that is wise and sound law, why should a man suffer from disability as a citizen upon all matters, although these have no connection with his erroneous conception as to facts. We have, too, the satisfaction in feeling that this reading of the law has been adopted up to the present time, and we cannot doubt that the law upon this point may now be regarded as definitely settled.[2] It has long been acted upon in America.[3] These, then, are the principal points which seem to us to demand notice in this place. There are many minor rules with reference to testamentary capacity which it will be necessary to note, but these, as well as the more minute examination and more ample illustration of the rules which we have alluded to above, will be more appropriately dealt with in another place. Here our object is simply to give the reader an accurate but general view of the whole of the science of medical jurisprudence as it has been developed in law; and in relation to the question of testamentary capacity, that has, to our thinking, been done. We pass now to contract.

[1] See also Morrison *v.* Maclean's Trustees, 27 Feb. 1862, 24 Dunlop, 625; 34 Jur. 311—in which case the Scotch courts decided that a deed disclosing no trace of incapacity or insanity may nevertheless spring from an insane belief or delusion, in establishing which there must be proved both the groundlessness of the belief and the impossibility of its being entertained by any sane mind. It was positively decided, however, that the existence of a disordered belief upon some extraneous point having no connection with the subject, is not fatal to the deed.

[2] See also Boughton *v.* Knight, 42 L. J., P. 25; Hobson *v.* Nicholson, author's MS. notes, post.

[3] See Cotton *v.* Ulmer, 45 Ala. 378; Johnson *v.* Moore, 1 Litt. (Ky.) 371; James *v.* Langdon, 7 B. Mon. 193; Boyd *v.* Eby, 8 Watts 71; Crum *v.* Thornley, 47 Ill. 192; Leech *v.* Leech, 4 American Law Journal, 179; Addington *v.* Wilson, 5 Ind. 137; Thompson *v.* Thompson, 21 Barbour, 107; Durham's Appeal, 27 Conn. 192; Boardman *v.* Woodman, 47 N. H. 120; Turner *v.* Hand, 3 Wall. Jr., 120; American Seamen's Friend. Soc. *v.* Hopper, 43 Barb. 625; 33 N. Y. 619; Lucas *v.* Parsons, 24 Ga. 640; Gass *v.* Gass, 3 Humph. 278; Thompson *v.* Quimby, 2 Bradf. Sur. 444; Clapp *v.* Fullerton, 34 N. Y. 190; Hall *v.* Hall, 38 Ala. 131.

§ 25. **Capacity to Contract.**—Here, as in the case of wills, the same rules are binding as those which were laid down in reference to crime and responsibility. Law has to do with conduct. With thought it does not meddle, except as thought manifests itself in act. It is with the actions of men it has to do. But in dealing with the actions of men, it must make direct appeals to thought. It influences men through their thought. Now, in every relation there are two kinds of thought which result in producing conduct, and the existence of which the law must recognize. There is thought passing into volition, which the law, by supplying motives to, can effect, and there is thought which passes over into act which no law which can be laid down can influence. The former is healthy thought, or sanity; the latter is unhealthy thought, or insanity. Now, these remarks are true in relation to any kind of conduct, whether that conduct be an act which is contrary to law, the execution of a will, or the making of a bargain. If thought has passed over into act in defiance of volition, then the individual is not responsible for it, for it cannot be called his: the will must have no effect given to it, as it is not his will, and the bargain must not bind him, as he did not consent. Thus we see that the principles of the law are applicable throughout every department of jurisprudence. The question, then, which must be answered, with regard to any contract entered into by a person who is supposed to be insane, will be, Did he at the time the contract was made know what he was doing—that is, did he appreciate the consequences of his act, and was he able to give a rational consent? If that question can be answered in the affirmative, then it matters not whether he was insane or not: he must be held to have bound himself by the bargain. That many persons who suffer from mental disease are not in a position to transact any such business, it does not require much observation to prove. Although it seems that in old times the marriage of an idiot was valid,[1] it is not so now.[2] Any one who is an idiot or a lunatic, whose insanity

[1] Rolls Abr. 357; Shipp Abr. tit. Idiot, 1 Sid. 112; Harg. Co. Litt. 80 *a*, note 1; 1 Bl. Comm. 438.

[2] Morrison's Case, coram Delegates, 1745; 1 Hagg. 417; Cloudesley *v.* Evans, Prerog. 1763; Parker *v.* Parker, 1757, cited 1 Hagg. 417; Turner *v.* Turner, 1 Hagg. 414; Browning *v.* Reane, 2 Phill. 69.

is of such a nature as to deprive him of all knowledge of the circumstances of the affairs connected with the transaction, is necessarily deprived of all the capacity which belongs to a sane man in relation to contract. The act must be intelligently done, and the intelligence is to be judged of in relation to the experience which we have of the shrewdness and sense which men ordinarily bring to bear upon their business doings. Here capacity is no more to be judged of by mere illiterateness, nor inferiority of intellectual power than in relation to wills. The policy of the law is to make contracts as free as possible, and to make the execution of wills as easy as it may be. The latter tends to the encouragement of prudence, of self-restraint, and to the accumulation of capital—which, in a politico-economical point of view, is one of the greatest benefactions which a private individual can do to the community,[1] for even the miser, if he puts his money out at usance, is doing an inestimable service to his kind. The latter tends to the more rapid distribution of the products of nature and industry, to the encouragement of production, of manufacture, and cultivation, and to the wide-spread material prosperity of mankind. To effect this purpose, law must not put unnecessary restrictions upon the transactions of men, and must yet protect those who are unable to bring intelligence to bear upon their affairs, from the rapacity and fraud of the covetous and dishonest. The rule that it is only such a state of mental disease as incapacitates the individual from forming an intelligent, although it need not be a far-seeing or clever, idea of the consequences of his act, and such a condition of the active or doing faculties of his mind as to be able to intend to do what is actually the object of the contract, seems well fitted to effect this object. This is indeed the rule of law as gathered from the cases which have been decided in this country[2] and in America.[3]

[1] Mills' Political Economy, Book I., Chap. IV.; Scrope's Political Economy, Chap. VII., 2d ed.

[2] Ball *v.* Mannin, 3 Bligh N. S. 1; Dane *v.* Kirkwall, 8 Car. P. 679; Sentance *v.* Pool, 3 Car. & P. 1; Dunnage *v.* White, 1 Wils. C. C. R. 67; Hall *v.* Warren, 9 Ves. Jr. 605.

[3] Lewis *v.* Baird, 3 McLean, 56; Hovey *v.* Chase, 52 Me. 305; Baldwin *v.* Dunton, 40 Ill. 188; Clearwater *v.* Kimber, 43 Ill. 278.

§ 26. **Capacity to Contract in relation to Delusion.**— Here again our task is only one of reiteration. The principles of the law have already been sufficiently explained with reference to the right to do the acts of citizenship, which, as we have seen, accompany the ability to do them. Of course, this test of ability is only to be a rough one. The law does not exist to rectify mistakes: it cannot protect ordinary men from the effects of imprudence, rashness, want of skill or experience; and if, on account of any of those ordinary disabilities of a very large number of men and women, a disadvantageous bargain is made, the law does not set it to rights. Men are moulded through their faults, and all experience has to be paid for. But where fraud is proved, or where real incapacity, not simply of experience, but of nature, is apparent, law does interfere to protect the individual. Now, incapacity may exist in relation to one subject or one person. A man may have a delusion that a piece of property which really belongs to him is not his, and that even if he gets an "old song" for it, he is the winner, as he parts with nothing. This delusion, then, would affect a contract for the conveyance of the estate in question, and the law would hold the contract void upon proof of the delusion, although the individual who labored under it might be sane in relation to every other subject, and able to make hard bargains in relation to cotton or corn.[1] The rule, then, in relation to contracts entered into by persons who labor under delusional insanity of any kind is the same as that which applies to wills. Of course, great care is always to be taken in cases in which a morbid belief is proved to exist. It is necessary to have it proved beyond doubt that the delusion is a limited one, and that it does not affect the whole scope of the individual's active thought. Of course, in the first instance, every man is to be presumed sane,[2] and it rests with those who would avoid the contract to show that the delusion or hallucination existed at the time the contract was entered

[1] Attorney General *v.* Parnther, 3 Bro. Ch. 433; Staples *v.* Wellington, 58 Me. 453; Emery *v.* Hoyt, 46 Ill. 258; Dennett *v.* Dennett, 44 N. H. 531; Rodman *v.* Zilley, 1 Saxt. Ch. 320; Atkinson *v.* Medford; 46 Me. 510. See also Thomson *v.* Leech, 3 Salk. 301.

[2] See Sutton *v.* Sadler, 3 C. B.. N. S. 87; 26 L. J. C. P. 284; Symes *v.* Green. 1 S. & T. 401.

into.[1] Insanity which comes on after the contract has been entered into, is no bar to its execution.[2]

§ 27. **Distinction between Executed and Executory Contracts by the Insane.**—One thing is to be borne in mind in this connection, and that is that there are two parties to a contract, and that each of these has an interest in the bargain, and the interest of the sane party to the transaction is as much an object of the law's protection as the interest of the insane. It is on this ground that it is necessary to distinguish between these two classes of contracts. An executed contract is one the object of which is performed;[3] an executory contract is one in which a party binds himself to do or not to do a particular thing.[4] In reference to an executory contract, it may be remarked that the law is unwilling to lend its aid to carry it into effect against an insane person who was known to be such by the other contractee, except where such contract was for the supply of necessaries.[5] Yet where the incapacity was unknown to the creditor, and no advantage of any existing weakness was taken advantage of by him, this rule would not be strictly adhered to, especially if it has been partly executed. "Where a person," says Pollock, C. B.,[6] "apparently of sound mind, and not known to be otherwise, enters into a contract for the purchase of property which is fair and *bona fide*, and which is executed and completed, and the property, the subject-matter of the contract, has been paid for and fully enjoyed, and cannot be restored so as to put the parties *in statu quo*, such contract cannot afterwards be set aside either by the alleged lunatic or by those who represent him." This, then, shows how the law protects the interests of those who may contract with an insane person in ignorance of his incapacity. Where it is executed under

[1] Staples *v.* Wellington, 58 Me. 453.

[2] La Rue *v.* Gilkyson, 4 Barr. 375; Beals *v.* See, 10 Barr. 60; Parker *v.* Davis, 8 Jones N. C. 460; Yates *v.* Boen, 2 Str. 1104; Baxter *v.* Portsmouth, 5 B. & C. 171; Affleck *v.* Affleck, 3 Sm. & G. 394.

[3] Fletcher *v.* Peck, 1 Powell, Contracts, p. 234.

[4] 1 Powell, 235.

[5] See Addison on Contracts, p. 873; Chitty on Contracts, 112; Story on Contr., vol. 1, § 27; Skidmore *v.* Romaine, 2 Bradf. 122.

[6] Molton *v.* Camroux, 4 Exch. 17.

these circumstances, it will not be rescinded unless it can be done without injury to the parties, or, in other words, unless such an action will have the effect of placing the parties *in statu quo*.[1] In the case from which the above quotation was made,[2] [7]the right of a lunatic or his representatives to rescind an executed contract entered into by him, such contract, not being for necessaries, was called in question. A lunatic had purchased certain annuities of a life assurance company, and had paid the consideration money and a premium in respect thereof. After his death, an action was brought for the recovery of the moneys paid by him by his administratrix, under the following state of facts as found by special verdict. At the time the annuities were granted, and payment of the consideration money made, the intestate was a lunatic and of unsound mind, so as to be incompetent to manage his affairs; but of this the assurance company had not at that time any knowledge. The purchases of the annuities took place in the ordinary course of business: they were fair and *bona fide* transactions, the grantee appearing to the assurance company to be of sound mind, although he was, in fact, a lunatic. The question, therefore, reserved by the special verdict was, whether the mere fact of unsoundness of mind, not apparent at the the time of the transaction in question, was sufficient to vacate the act, albeit executed by the grantee by payment of the consideration money, and intended *bona fide* to be executed by the grantor by payment of the annuity. On deciding the question on appeal, the Court of Exchequer Chamber made the following remarks:[3] "The old doctrine was that a man could not set up his own lunacy, though such as that he did not know what he was [8]about in contracting.[4] The same doctrine was applied to drunkenness. It is true that there are some exceptions to the old authorities, and the doctrine is not laid down uniformly with perfect distinctness; but, in general, it was as above stated. Modern cases have

[1] As to American law, see Beals *v.* See, 10 Barr. 56; Desilver's Est. 5 Rawle, 11; Benscll *v.* Chancellor, 5 Wharton, 37; Kindall *v.* May, 10 Allen, 59; Beller *v.* Jones, 22 Ark. 92; Henry *v.* Fine, 23 Ark. 417; Carr *v.* Holliday, 5 Ired. Eq. 167; Northington Ex parte, 37 Ala. 496.

[2] Molton *v.* Camroux, 4 Exch. 17; 12 Jur. 800.

[3] 4 Exch. p. 19.

[4] See Beverley's Case, 4 Rep. 123 *b*, Co. Litt. 247 *b*.

qualified it, and enable a man or his representatives to prove that he was so lunatic or drunk as not to know what he was about when he made a promise or sealed an instrument. This special verdict hardly shows any such state of mind; but even if it did, the modern cases show that when the state of mind was unknown to the other contracting party, and no advantage was taken of the lunatic, the defence cannot prevail, especially where the contract is not merely executory, but executed in the whole or in part, and the parties cannot be restored altogether to their original position." It is evident, then, that "when a person, apparently of sound mind, and not known to be otherwise, enters into a contract for the purchase of property which is fair and *bona fide*, and which is executed and completed, and the property, the subject-matter of the contract, has been paid for and fully enjoyed, and cannot be restored so as to put the parties *in statu quo*, such contract cannot afterwards be set aside either by the alleged lunatic or those who represent him."[1] If an action is brought to recover money paid under a contract upon the ground of the plaintiff's lunacy, and the issue is, whether at the time of the particular transaction the fact of the plaintiff's insanity was known to the defendant, evidence as to the plaintiff's conduct upon various occasions both before and after the date of the particular transaction, with a view to showing that the malady under which the plaintiff labored, was of such a kind as would make itself apparent to the defendant at the time of the said transaction, will be admissible.[2] Yet a man, by bare execution of an instrument under seal, does not make it his deed, if, at the time of the execution, he was so weak-minded as to be incapable of understanding it when explained to him;[3] but a deed executed by a lunatic during a lucid interval is binding upon him, but the *onus* [9] of proving that it was so executed lies upon the party claiming under the deed. Mere imbecility is not of itself sufficient to render void a contract, unless an appreciable incapacity of understanding and acting with discretion in the ordinary affairs of life re-

[1] Judgm. 2 Exch. 500. See also Dane *v.* Kirkwall, 8 Car. & C. 679; Brown *v.* Jodrell, 3 Car. & P. 30; Niell *v.* Morley, 9 Ves. 478; Alcock *v.* Alcock, 3 Man. & G. 268; Tarbuck *v.* Bispham, 2 Mees. & W. 2; Frost *v.* Bevan, 22 L. J. Chanc. 638.

[2] Beavan *v.* McDonnell, 10 Exch. 184.

[3] Shelf, Lunatics, 2d edition, p. 338.

sults therefrom. Such incapacity, it has been said, affords the true test of what amount of unsoundness of mind will avoid a deed at law. While mere weakness of mind will not render void the contracts of the party laboring under this disability, it will be a material circumstance in establishing an inference of unfair practice, fraud, or imposition.[1] In America, it was for a long time held that both executed and executory contracts, unless they were for necessaries, were void,[2] but more recent decisions have brought the law into conformity with the English rule.[3]

§ 28. **Commission of Lunacy.**—"The Lord Chancellor, to whom," says Blackstone, "by special authority from the king, the custody of idiots and lunatics is entrusted, upon petition or information, grants a commission in the nature of the writ, *de idiota inquirendo*,[4] to inquire into the party's state of mind, and if he be found *non compos*, he usually commits the care of his person, with a suitable allowance for his maintenance, to some friend, who is thus called his committee. However, to prevent sinister practices, the next heir is seldom permitted to be this committee of the person, because it is his interest that the party should die. But it hath been said there lies not the same objection against his next of kin provided he be not his heir, for it is his interest to preserve the lunatic's life in order to increase the personal estate by savings, which he or his family may hereafter be entitled to enjoy. The heir is generally made the manager or committee of the estate, it being clearly his interest, by good management, to keep it in condition, accountable, however, to the Court of Chancery, and to the *non compos* himself, if he recovers, or otherwise to his administrators."[5] In the theory

[1] Kent Com., 10th ed., vol. ii. p. 609. See per Lord Cranworth, C., 6 H. L. Ca. 45. See also Story Eq. Jur. § 234–238; Longman *v.* Ledger, 2 Gif. 157; Nottidge *v.* Prince, 2 Gif. 246; Rhodes *v.* Bate, 1 L. R. Ch. 256; Seeley *v.* Price, 14 Mich. 541.

[2] La Rue *v.* Gilkyson, 4 Barr. 375; Mitchel *v.* Kingman, 5 Pick. 431; Rice *v.* Peet, 15 Johns. 503; Grant *v.* Thompson, 4 Conn. 203; Lang *v.* Whidden, 2 N. H. 435; Fitzgerald *v.* Reed, 9 Smedes & M. 94; Seaver *v.* Phelps, 11 Pick. 304.

[3] Beals *v.* See, 10 Barr. 56; Hovey *v.* Hobson, 53 Me. 457; Miller *v.* Craig, 36 Ill. 109; Somers *v.* Pumphrey, 24 Ind. 231; Cram Admr. *v.* Cram, 33 Vt. 15.

[4] The writ *de lunatico inquirendo* is of the same nature as that of *de idiota inquirendo*.

[5] Bl. Com., b. i. ch. 8. See also 16 and 17 Vict., c. 70, and 25 and 26 Vict. c. 86.

of the law, the Queen, or her Lord Chancellor and Lords Justices, on her behalf, have the care of all the lunatics in this country. Other people can, under equal laws and a fair administration of them, look after themselves and their own affairs, but those who, by reason of mental disease, are deprived of that sense and prudence which are required for such management, require that there should be some care exercised not only over their estates but over their persons; and this care is undertaken, in the first instance, by the Queen, and then, by delegation and appointment, by some friend or relative of the person who labors under the incapacitating mental infirmity. In case a commission is issued, and in case a personal care of the lunatic and his estates is upon that inquiry found necessary, and a committee is appointed, the insane person is deprived of his civil rights as to the exercise of liberty and the disposal and management of his own affairs. It follows, then, that it is of much importance to ascertain upon what grounds the Court of Chancery will deprive an individual of these franchises and will appoint a committee. We shall see that the law is clear and distinct upon this point, but we must, in the first instance, say a few words as to the procedure in such cases.

§ 29. **The Procedure of a Commission.**[1]—The procedure of an inquisition commences with a petition for inquiry, and if the lunatic is within the jurisdiction,[2] notice of the presentation of the petition must be given to him.[3] The inquiry which follows may be held before a jury or it may not. Formerly, it always took place before a Master, but by a more recent statute, it is enacted that the Lord Chancellor may direct the issue as to the alleged insanity to be tried in one of the Superior Courts of common law at Westminster. The alleged lunatic is examined, and the facts which bear upon the question of his soundness or unsoundness of mind are investigated. Where a jury has not been demanded or

[1] As to the similar process of appointment of Tutors at Law in Scotland, see Fraser's "Family Relations," vol. ii., 317 *et seq.;* Craig, 1, 12, 29; Ersk. 1, 7, 50; Bell's Princ. § 2111. See also McAdam & Walker *v.* McAdam, 1 Dow. 177; Jardine *v.* Currie, 8th July, 1825; Bryce *v.* Graham, 25th Jan.,, 1828.

[2] 16 and 17 Vict., c. 70, § 4.

[3] 16 and 17 Vict , c. 70. § 40, 45.

allowed, and the evidence has been led, and where the Master has personally examined the alleged lunatic, he proceeds to certify his finding, and such certificate is deemed to be an inquisition, and has the effect of an inquisition taken upon the oath of a jury;[1] the effect of such inquisition being that the individual found to be of unsound mind is deprived of the management of his property and affairs, and committees of his person and estate are appointed. An inquisition finding a man a lunatic may be traversed[2] upon petition; and even when a traverse is inadmissible, as it is where the inquisition has been made on the trial of an issue in a common law court, the Lord Chancellor may, upon petition, order a new trial, or a new inquiry, and where the Lord Chancellor is convinced of the expediency, he may, with the consent of the lunatic and of the other persons concerned, order the inquisition to be superseded.[3] One other particular is to be noted in relation to the process by means of which the rights of one man are transferred into the keeping of another, and that is, that the inquiry, however made, is confined to the question of lunacy of the individual at the time of the inquiry, and no evidence as to what the alleged lunatic said or did, as to his demeanor or state of mind at any time more than two years before the time of the inquiry is to be given, unless the Judge or Master otherwise directs.[4] But it is to be borne in mind that the real object of inquiry in all such cases is the general incompetency of the individual to manage his affairs, and not a question as to his capacity to do any particular act. The affidavit which is filed in proof of

[1] 16 and 17 Vict., c. 70, § 42, 44. See Fry's Lunacy Acts, London, 1864, p. 3; Sabbin & Browne's Handbook of Law of Lunacy, London, 1872, p. 58.

[2] See 2 and 3 Edw. VI., c. 8, § 6.

[3] This practice in most of the United States is almost exactly similar to that of the Court of Chancery in England. See Black's Est. 6, Harris, 434; Hulings *v.* Laird, 9 Harris, 268. In America, however, they are in the habit of issuing an inquisition on the case of drunkenness as well as on that of unsound mind. The drunkenness which will warrant an inquisition must be habitual (a fixed habit of drunkenness.) See Hitchman *v.* Richie, Brightly Rep. 143; Com. *v.* Kirkbride, 2 Brews. 400; Sill *v.* McNight, 7 W. & Ser. 245; State *v.* Pratt, 34 Vt. 323; Ludwick *v.* Com., 6 Harris, 173. And see Lackey *v.* Lackey, 2 B. Monr. 478; Matter of Russel, 1 Barb. C. R. 38; Matter of Lasher, 2 Barb. C. R. 97; Matter of Mason, 1 Barb. C. R. 436; John Beaumont's Case, 1 Wharton's Rep. 52. See Bryce *v.* Graham, 25 Jan. 1828; 4 Irvine, 506. and Ederline's Tutor, and 2 Fraser's Family Relations, 330.

[4] 25 and 26 Vict., c. 86, § 3.

lunacy in such proceeding may be founded upon facts ascertained and observations made at a number of interviews with the alleged lunatic, and differs in this respect from the certificate of a medical man which is given with a view to the incarceration of an insane person in an asylum, hospital, or licensed house, in which the general declaration as to the mental condition of the individual must be supported by facts observed upon the day when the certificate is signed; and all information quoted in such certificate must also have been obtained upon the same occasion.

§ 30. **Incapacity which will justify an Inquisition.**— [6] Commissions of lunacy were originally granted for the purpose of inquiring whether the individual was either an idiot *ex nativitate*, or a lunatic, in the meaning of the term attached to it by Lord Coke. Ultimately, however, the phrase, "unsound mind," was used in the writ with the view of embracing all those who were considered proper subjects of the commission, and who did not fall under either of the terms used in the writ which was originally issued. Lord Hardwicke and Lord Eldon made attempts to give this phrase a definite connotation; and Mr. Amos, at one time Professor of Medical Jurisprudence in the London University, said that "the term unsoundness of mind, in the legal sense, seems to involve the idea of a morbid condition of the intellect, or loss of reason, coupled with an incompetency of the person to manage his own affairs;" but it has been decided "that if the jury find merely the incapacity of the party to manage his affairs, and will not infer from that and other circumstances unsoundness of mind, though the party may live where he is exposed to ruin every instant, yet, upon that finding, the commission cannot go on."[1] It has been argued that the necessity which the law casts upon the jury of inferring the "unsoundness of mind," especially when the phrase is not itself clearly understood, or at least defined by some of our ablest lawyers, is inexpedient, and that in many cases the finding of the jury that the individual was incapable of man-

[1] 19 Vesey, 286. In Scotland, curators have been appointed to deaf and dumb persons, though they are of sound judgment, where it appeared that they were unable to exert that judgment in the management of business.

aging his own affairs, should be sufficient for the continuance of the commission. And yet many very cogent reasons can be given why our English courts were disinclined to sanction the commission, unless the return asserts mental unsoundness. The object of the commission is not to ascertain whether the party is or is not able to manage his own affairs, and is or is not capable of governing himself, but, whether by reason of mental infirmities, amounting to one or another kind or description of insanity, he is thus unable to manage his affairs or thus incapable of governing himself. And the principles upon which our law has made an inference of insanity necessary from the circumstances, seem to me to be sound, and founded upon a more [7] thorough principle of justice than has been understood by those who argue against its expediency. The expedient of allowing a jury to find simply that the person was incapable of managing his affairs would have avoided the difficulty which we have here to consider, viz., of deciding what amount of mental unsoundness will justify an inquisition. In the late case of Mr. W. F. Windham, the Master, in summing up to the jury, said: "What the jury had to decide was whether Mr. Windham was of such sound mind as to be able to govern himself and his affairs. In the time of Lord Hardwicke, it was necessary to find a man absolutely insane; but in 1802, Lord Eldon declared that the Court of Chancery thought itself authorized to issue a commission, provided it were made out that the party was unable to act with any proper and provident management, was liable to be robbed by any one, or (and?) was labouring under that imbecility of mind which, though not strictly insanity, equally required the protection of the law. Lord Lyndhurst, in 1827, adopted the ruling of Lord Eldon, which might be taken, therefore, as an authoritative declaration of the law of England." And after referring to the doctrine above alluded to and its decision by Lord Eldon, the Master continued: "From all this, it resulted that in order to justify a verdict against Mr. Windham, the jury must be satisfied that he was incapable of governing himself and his affairs, by reason of unsoundness of mind. Mere weakness of character; mere liability to impulse or susceptibility of influence, good or bad; mere imprudence, extravagance, recklessness, eccentricity, or

immorality—no, not all these put together, would suffice, unless they believed themselves justified, on a view of the whole evidence, in referring them to a morbid condition of intellect." "Mere extravagance or follies," as Lord Chelmsford declared when commenting on this case in the House of Lords, "are not sufficient, unless the imbecility amounted to unsoundness of mind."[1] "From these principles of the law, it may be inferred that in any case where the person is not in a position to manage his affairs with prudence and reason, and where such incapacity is due to mental disease, the Court of Equity will interfere to protect the individual and his estate from the prodigality, the wastefulness, and incompetence of his diseased self." In America, on the trial of an issue, in the proceedings on an inquisition, the Court charged that, "until the mind is entirely blotted out, persons must be left to manage their own affairs. As long as there is a spark of intelligence left, the law does not permit their liberty to manage themselves or property to be taken from them." In reference to this remark, it may be said that in no case could these conditions of equitable interference be met with; in no case could it be said that the mind is entirely obliterated; in no case do the faint sparks of intelligence die out before death itself extinguishes them. A writ of error was taken out in this case, on the ground that the above quotation contained a misdirection. In the Supreme Court, the opinion was that "the true and practical test under this proceeding is this: Utter and unmitigated madness, or absolute and hopeless idiocy, resulting from cerebral injury or disease or want of intellect from nativity, are by no means the only tests. The protection of property is one, if not the main object of the statute: it is practical that the test of insanity should depend greatly on the unsoundness of mind which discloses incompetency to its management, and the care and protection of it in a rational manner; and this is the rule in England."[2] Another case is quoted by Wharton,[3] in which a petition for commission *de lunatico inquirendo* was presented by the son of Sarah Collins, in 1867, to the Chancellor of New Jersey,

[1] "Times," 30 January, 1862.
[2] Commonwealth *v.* Schneider, 59 Penn. 328.
[3] Mental Unsoundness and Psychological Law, § 104.

applying for a commission to take charge of his mother's person and estate. She was in the hundredth year of her age: her hearing was somewhat impaired, and her sight very much so. The weight of the medical testimony, however, was in favor of her soundness of mind. The Court held that there was no presumption against her soundness from her extreme age. "She may," says the Chancellor, "be so weak and infirm as to be easily influenced or imposed upon, which would be a reason for setting aside any instruments or transactions executed under the effect of such influence, but this does not amount to unsoundness such as to take from her the control of herself and her property."[1] The doctrine which was laid down by Pollock, C. B., in Nottidge *v.* Ripley and Nottidge,[2] which was an action brought to recover damages for the incarceration of the plaintiff, (a maiden lady,) in a licensed house for lunatics, under the pretence that she was of unsound mind, when in truth she was perfectly sane, where he directed the jury that if they considered upon the evidence that the plaintiff was not in such a state as to be dangerous to herself or others, then, the plea to that effect not being made out, the verdict ought to be for the plaintiff," has been long since seen to be wrong, and it is well understood that the objects of lunacy legislation in this country have been undertaken as much with a view to the cure of the individual affected, as for the safety of the community. But as it is well understood, as the Commissioners in Lunacy have pointed out,[3] that it does not require the verdict of a jury to justify incarceration in an asylum, so it is obvious that in many cases, in which such incarceration may be resorted to

[1] Collins *In re*, 3 Green Ch. (N. J.) 253.

[2] Reported in "Times," June 25, 26, and 27, 1849. See also Journal of Psychological Medicine, vol. ii., p. 630.

[3] The Commissioners in Lunacy addressed a letter to the Lord Chancellor on this subject on the 4th July, 1849. (Printed by order of the House of Commons 1st August, 1849, Sess. Papers, No. 620.) In it they entered fully into the important question as to the class of lunatics who may be lawfully placed and kept in confinement. As the Lord Chief Baron had intimated an opinion that no person ought to be so confined unless he was dangerous to himself or others, the Commmissioners in speaking of the scope of the lunacy acts, said: "The object of these acts is not, as your Lordship is aware, so much to confine lunatics as to restore to a healthy state of mind such of them as are curable, and to afford comfort and protection to the rest. * * * "Moreover, the difficulty of ascertaining whether one who is insane be dangerous or not is exceedingly great, and in some cases can only be determined after

for the benefit of the individual, and with a view to his more rapid recovery, there does not exist such a condition of mental unsoundness as should deprive a man of the management of his estates. So far as we know, there has been no judicial decision upon this important point, but we cannot doubt that such would be the holding of the Court of Equity, if the question came before it. With the purpose of showing how jealous the law is for the liberty of the individual, and for his uninterfered with rights as to his property, and as further illustrating the point which has been dwelt upon, viz., that it is always necessary to prove mental unsoundness, we may refer to some of the facts which were proved in the case already referred to, and from which we have quoted the Master's statement of the law.[1] In this case, the petition alleged imbecility as a cause for a commission on William Frederick Windham of Felbrigg Hall, Norfolk. It appeared that he was sent to Eton as a boy, but that while there his conduct was so strange and extravagant as to lead to the belief that he was at that time insane. With time, his peculiarities did not diminish, but increased. He was lavish and absurd in his expenditure of money, and bought things which he could not possibly use. He incurred large debts: he was guilty even in public of gross indecency, and he sought companionship among the dissolute and uneducated. Shortly after he came of age, he contracted a marriage with a woman of disreputable character, knowing that up to the night preceding his marriage she had been the mistress of, and cohabited with, one of his own friends or associates. His income did not

minute observation for a considerable time." It is of vital importance that no mistake or misconception should exist on the subject of lunacy; and every medical man who may be applied to for advice on the subject of lunacy; every relative and friend of any lunatic, as well as every magistrate and parish officer, (each of whom may be called upon to act in cases of this sort,) should know and be well assured that, according to law, any person of unsound mind, whether he be pronounced dangerous or not, may legally and properly be placed in a county asylum, lunatic hospital, or licensed house, on the authority of the preliminary order and certificates prescribed by the acts." And further, with respect to resorting to a commission of lunacy, the commissioners added: "It is obvious that the finding of a jury is in no case essential in order legally to justify the confinement of a person of unsound mind." See also the Fourth Annual Rep. of the Commissioners in Lunacy, 30 June, 1849, p. 10, and Fifth Rep. 30 June, 1850, p. 14. See a remonstrance with the Lord Chief Baron touching the case of Nottidge *v.* Ripley, by John Conolly, M. D., London, 1849.

[1] *In re* Windham, see "Times," 30 Jan., 1862.

exceed £1580 per annum, yet he presented his wife with jewelry of the value of £12,000 or £14,000, and settled £800 a year upon her absolutely. He condoned his wife's adultery. His habits were uncleanly, his appetite voracious, and his feelings blunt and callous. There was, of course, a conflict of medical testimony. Drs. Forbes, Winslow, Mayo, Bright, and Southey, came to the conclusion that he labored under imbecility, and was quite incapable of managing his own affairs, while Drs. Tuke, Sutherland, Hood, Seymour, and Connolly, held that Mr. Windham was sane and of sound business capacity. After Master Warren's summing up, the jury, by a majority of 15 to 8, returned a verdict that Mr. Windham was of sound mind and capable of taking care of himself and his affairs. The question, then, to be decided in all these cases is, is the alleged lunatic *incapable* of managing his affairs; not does he manage his affairs well or ill; not is he prudent and thrifty, or imprudent and prodigal; not is he wise or foolish? It would be for the interest of friends, in many cases, to prevent young and rash men from squandering princely fortunes with a profuseness which would have emptied the treasure-chests of Crœsus. But the law is not for the purpose of keeping fortunes together for the benefit of those who may come in time to possess them: it is not for the purpose of compelling men to be wise and prudent, but it is for the protection of those who are incapacitated from exercising their understanding in the affairs of business, when that incapacity is due to mental disease. And from what has been said above, the principles upon which the law exercises this care of the insane, and the amount of mental unsoundness which will call for this protection cannot fail to be understood.

§ 31. **Conclusions.**—It is scarcely necessary to sum up the conclusions which have been arrived at in this chapter. They are given with considerable brevity in the text, and will require to be separately reiterated when we come to consider the nature of the various kinds of disease which incapacitate a man as a citizen, or render him irresponsible for those departures from citizenship, or common human duty, which have been called crimes. We have seen that there is a per-

fect and excellent uniformity in the principles upon which the Courts deal with the various classes of cases which come before them, and in which the real issue is the question of sanity or insanity. We have seen that the rules which have been laid down in relation to the capacity and responsibility of persons who labor under mental disease are, notwithstanding the numerous attacks which have been made upon them by medical gentleman, philanthropists, and others, satisfactory when viewed either in relation to law, or to the facts of this painful disease. We have arrived at this conclusion only after a long and careful examination of all that could be, and all that had been, said on the other side. We arrived at it after as careful a study of the phenomena of insanity as our opportunities enabled us to make. We enunciated this opinion in the first edition of this work, and we cannot now see any reason to express another. We believe that its accuracy will appear from what has already been said, but that it will be more conclusively proved from an examination of other parts of this work.

CHAPTER II.

ON THE CAUSES OF INSANITY.

§ 32. **Reasons why the Subject is treated in this Work.**—It may seem to some of the readers of this work that in speaking of the causes of insanity we are dealing with questions which do not fall within the scope of medical jurisprudence.[1] We are, however, so thoroughly impressed with the belief that the real appreciation of the subject depends, to a very large extent, upon a knowledge of the etiology of disease, that an intelligent understanding of insanity depends so much upon a study of the conditions which conduce to it, that it seems necessary to say something as to this vexed question in this place. Few subjects have been more largely discussed, and few discussions have been productive of so little profit. Many medical men have shown a peculiar ineptitude in this connection, and the public in general have felt the whole matter so doubtful, that they have now ascribed it to possession by the Devil, and now to affliction by the hand of God. Indeed, superstition has a way of appropriating everything that is dark and inexplicable. These circumstances seem to us to justify some consideration of the questions connected with the causes of insanity. One other circumstance would make this doubly expedient. In modern times, the fact of hereditary transmission of mental qualities has become prominent, and is now almost universally recognized. The past is admitted to throw much and useful light upon the present, and in considering the causes of insanity,

[1] A friendly reviewer of the first edition of this work said: "Mr. Browne has no more need to give us a chapter on the causes of insanity than a lawyer writing a digest of statute law to give a chapter on the causes of crimes."—Edinburgh Medical Journal, Sept., 1871.

we will have to discuss the important question of hereditary tendency and transmitted disease. Without a knowledge of the main facts which are recognized as the ground of this theory, a study of medical psychology would be of little use. Many things, to be well understood, must be looked at in relation to the race as well as the individual; and insanity, or the subject of health in its wide sense, as including mental life as well as physical existence, is preëminently one of these.

§ 33. **The Difficulty of Discovering the Cause of Insanity.**—[23]The cause of anything in the present is the whole past! But we have to limit our inquiry to the little things which are next in point of succession to the effect-events of our time; and we call them causes, without raising the metaphysical question. Two things known together, mean knowledge—that is all we know. It is in this light, then, that we must look at the question of the etiology of insanity. Who can say what are the causes of insanity? One must enter into a synthesis of causes, and confess that the man is half the cause of his own hurt, if he is pierced by an arrow, and that he is half the cause of his own disease, if through any combination of circumstances he becomes insane. Life is like a long string of algebraic figures, with the signs plus (+) and minus (—) before each quantity. They are always varying and being carried over from one side to the other of the equation which is to determine the value of x, which stands for health. It follows, therefore, that he who would say why a man goes insane, would require a complete and thorough biography of this man—nay, would require to know of the lives of those who went before him; of the influences to which he fell heir; of the chains which were forged for him by the material fate of a hereditary transmission. "Every man carries his destiny on his forehead," say the Mohammedans; but not on his forehead only, say we. Every nerve has an iron destiny forged in the past. Man is like a watch wound up by fate, to go for a season: he is made for [24]good or evil, by the past; and it is not the present that predetermines the future, but the past that predetermines all time. And what past went before that past? One thing alone

seems certain, that any answer to the question, as to what causes insanity—save that "through all time, if we read aright, sin was, is, and will be the parent of misery," and misery is the parent—and often the child resembles the sire—of insanity—is almost impossible. But the question narrows itself on account of our inability to answer it. All that we can hope to do is to arrive at a knowledge of some of the elements which went to constitute the cause, and by keeping in view the fact, that these are only elements of a cause and not causes, avoid one of the errors which so many have fallen into, of ascribing certain composite effects to certain single antecedent events.

§ 34. **Classification of Causes.**—Causes, then, which are thought at the present time to conduce to insanity have been divided into predisposing and exciting, and into physical and moral. One thing is clear, whether there is nothing but mind, or nothing but matter; and that is, that the one set of these causes, in so far as we are here concerned, may be regarded as operating through, or by means of, the other. If mind is a manifestation of body, it is quite evident that moral causes are causes only on account of the physical changes which they produce. If mind manifests itself through body (which may be the objective idea), it is with those manifestations that we have to do in this place; for if, as bad glass distorts the images we see through it, by twisting the rays of light, so defective organism, or the lack of power to adapt subjective ideas to the objective idea, may distort the manifestations of mind—it is with the cause of this distortion that we have here to do.

§ 35. **Of Remote or Predisposing Causes.**—Civilization, it is said, has led to an increase of insanity. Statistics, in so far as they bear upon this question, are rubbish. We are told that insanity is rare amongst uncivilized peoples, and that in this country one in every five hundred is mad. Does that statement afford any figures for comparison? What is "common" expressed in numerical relation? And if it were settled, what would it prove? Not what it is meant to establish, it seems to us. We are glad to see that Dr. Ray, in an

able article upon the causes of insanity,[1] has expressed his dissent from the popular adage that figures wont lie, and shows that it is upon far other grounds that we must expect to arrive at correct conclusions as to the causes of mental disease. We hear, however, that theoretical considerations lead one to suppose that insanity has increased, and that civilization is the predisposing cause. Those theoretical considerations, as explained by Dr. Maudsley, are, that as in a complex [25] organization like the human body, there is a greater liability to disease, and the possibility of many more diseases, so in the increased complexity of the mental organization, it is reasonable to expect an increased liability to mental disorder. But why? In the first place, he assumes a fact; and in the second, we know that notwithstanding the increased complexity of structure of the human body, notwithstanding the number of kinds of tissues, and the orderly subordination of parts, that "man seems in his transitions from one climate to another to resemble domestic animals, with this difference, that he bears those changes better in proportion as he is civilized."[2] Why should not the same principle hold good here? Why should not the more complex mental organization lead to a more careful mode of life? Why should not the higher mental development lead, through science, to the diminution of the disease, through cure, by care in breeding, and by the avoidance of those actions which lead directly or indirectly to abnormal mental conditions?

There is more earnest living in these days, it is true; but why the human mind, which has made for itself the power to be earnest, which has so far overcome barbarism as to have gained the capacity for being "bored,"[3] should not have at the same time gained the vigor to withstand its unhealthy influences, it is difficult to say. To assert that the tendencies to disease only can be transmitted, is to say what is absurd; but it is to express plainly what seems to have been tacitly assumed in this case, for the sake of argument. Health is

[1] See Contributions to Mental Pathology, Boston, 1873.

[2] Waitz, Anthropology, § 4, p, 205.

[3] It was Comte who regarded the capacity for being bored as one of the most unmistakable signs of civilization.

inheritable. And he who says, "I gave my children all the health I got," says something better and nobler than he who says, "I gave my children double the property I got from my father."

We confess, it is difficult to see why our present civilization should have produced this bane. That we pet our lunatics, and number them as carefully as David did the people of Israel, is true, and the more we number, the more the plague rages. That the number of lunatics in asylums at the present time is greater than it was in times past is true, but it proves nothing but that asylum accommodation is much increased. That the number calculated to be in England at the present time is greater than it was some years ago, only suggests a more efficient system of ascertaining the actual amount of lunacy throughout the country, or that phases of life are [26] now recognized as insanity which were formerly classed under the head, sanity. But all the statistics that can be procured are utterly untrustworthy. It seems to us, however, that another argument tells against the supposition that civilization is a predisposing cause of insanity. Imbecility is the form that mental unsoundness usually assumes in uncivilized countries, while in countries which are advanced in civilization, mania is more common. Surely, then, if the mania has increased under the influence of civilization, imbecility must have decreased in the same proportion. It is surely unfair to ask to be allowed to run with the hare, and at the same to hunt with the hounds. If civilization has to bear the blame of the one, it ought to have the merit of the other. Again, it is assumed that the conditions of life are less healthy now than of yore. Some gentlemen somewhat inconsistently, ascribe insanity in man to the awful struggle to get rich, and ascribe the same disease in woman to the want of this struggle. But how does our age differ from others in this respect? Had they no struggles in time past: The struggle for bread with the gnawing tooth of hunger for a spur? Is the death-struggle less deleterious to mental health than the miser's grasp? But the struggle sharpens wits: men are "moulded through their faults" and their misfortunes. Adversity wears a jewel in its head. Even this

struggle for money, which takes not a few of our fellows into the dust and mud by day, makes nature more and more man's handmaiden.[1]

§ 36. **Other remote Causes considered.**—One author[2] endeavors to show that the law of nature which throws aside the weak and useless, and gives life's battle to the strong, causes insanity. He illustrates this principle by the dominion of man over weak woman—shows that some women, under the present system, must sin to live, and that marriage is the true and pure woman's goal; he asserts that, in consequence of various circumstances, they cannot all get married, and having no real work to do, that which was meant for honey, turns to gall: "sweet wants" have been in the heart in vain; desires have withered, because there was no answer to those demands of nature. That marriage is the chief end of a woman's existence, is, according to this author, due to the fact that for centuries women have suffered deprivation of liberty, have been in servitude to man, and have been taught that to minister in one way to man's enjoyment was [27] their highest function—that, when this hope fails, the heart and brain sicken, and they go mad.

Nothing is so popular in our days as this kind of reasoning, which is not reasoning at all. One may ask with reference to the above, (1.) Is it a fact, that in consequence of this circumstance women do go insane? (2.) If there are more women, in proportion to the population's calculated number, insane than men? And if these questions could be answered in the affirmative, one might, upon theoretical considerations, think that as Nature trains by means of conditions, if she trained women to look upon sexual intercourse as a goal, Nature has done wrong; and Nature is, to say the least of it, a very bad schoolmistress. If it could be shown that the proportion between men and women varied at the present time from what it formerly did, there might be some weight in the argument. But as that cannot be shown, it is difficult to see how an education of the sex, by means of con-

[1] Dr. Johnson said that men were seldom more harmlessly employed than when they were making money.

[2] Dr. Maudsley, in his "Psychology and Pathology of Mind."

ditions, to look upon sexual intercourse as a high function, should not all along have included in its curriculum lessons of strength under its deprivation—a strength which would withstand those disturbances which ever rise, according to this author, and which are the proximate causes of insanity. Why Nature, with as good means at her disposal, should teach one lesson and implant certain characteristics in the sex, and refrain from teaching the other, or implanting the other set of characteristics, it is impossible to say. Why, under such circumstances, women should masturbate, become religious, or go mad, or do all three, it is difficult to see.

§ 37. **Argument as to increase of Insanity considered.**—Overcrowding, and the very great distinction in respect to wealth and luxury, do, along with many other circumstances, lead to insanity; but to adduce these tendencies as proofs of the increase of insanity simply on the ground that they are remotely predisposing causes, is absurd. If the causes of insanity are used at all in this connection, it must be only by way of comparison (and that a careful one) with those predisposing causes which existed in times past, with a view from their relative potency (if that can be ascertained without solving the question of increase) to argue as to the number of perverts from sanity to insanity, which each of them made. This is a large question: assertion will not meet its demands.

§ 38. **Influence of Civilization upon Insanity.**—The question as to the influence of civilization is infinitely more [28]important in its connection with the change of type or in relation to synthetic etiology, than to the question of increase. That the pursuits, the conditions of social life, the forms of religion, and the direction of national thought, influence and modify character, and in that way modify the quality of insanity, is certain. In considering the question of the causes of insanity, it is of the utmost importance to remember that anything which may affect bodily health or mental ease or comfort in the present, may be regarded as a cause of insanity. The roots of disease are deep in the past. The vice,

the indiscretion, the overwork, the one-sidedness, the narrow-mindedness of our ancestors did not only make the history of their own times, but is making the pathology of ours. Every action, every event which contravenes the laws of health, however remote that action or event may be, is to be regarded as a predisposing cause of insanity. It is almost constant in practice to call the disease itself the cause. This confusion of cause and effect is very common, and it is only scientific training and much natural aptitude which will enable the diagnost on all occasions to distinguish these. Thus, we often hear that intemperance was the cause of insanity, and in many cases, as we shall hereafter see, excessive use of stimulants is a cause of insanity; but in half of the cases in which it is common to say the disease is due to the vice, the vice is in reality only a symptom or manifestation of the disease. In most cases, then, really to understand the origin of insanity, one must understand the murosis or psychosis, the long history of the tendencies to disease; for it is well understood that just as poisons are poisons only in relation to the constitution they enter, so that one man may swallow with perfect impunity what would cause death in another, so certain events may cause mental unhealth in one which would only produce healthy emotion in another. In this wide sense, then, any conditions of unhealth, such as excessive strain, excessive anxiety, excessive indulgence, diminished mental or bodily activity, must be regarded as predisposing causes; and consequently all those tendencies in time and in civilization to produce disease—all those tendencies which go to produce excessive demands before the organism has been formed by many calls to meet such strains, are to be placed in this category, and to be regarded as bringing about those conditions which are favorable to disease.

§ 39. **Sex considered in relation to the Causes of Insanity.**—Women were at one time thought to be more predisposed to insanity than men. Esquirol and Haslam agreed that it was so. But at the present time most writers seem to imagine that men are more prone to mental disease than women. Many writers, in their utter incompetence to deal with figures, which are two-edged swords, have computed the

number of patients admitted into one asylum in a certain time, and concluded that the proportion of women to men in these admissions is likely to be in the proportion of insane women to insane men throughout the world, and hence deduce a theory as to the predisposition. But it is to be remembered that the proportion between the insane of the two sexes is not found to be the same in all countries; and it can be confidently affirmed, that even in the same country, it varies at different periods. The argument as to the weakness of the female sex making her more liable to suffer from adverse circumstances, is, as has been already shown, fallacious. To say that her weakness is brought about by her servitude, and that it is her weakness makes her liable, just in consequence of never having been exposed to risks, is to reason in a circle. One must look at the whole circumstances. If her servitude has made her weak, it has been by protecting her from certain works and hardships which men have undertaken. If these works and hardships are still undertaken by men, then women, as a class, are not exposed to those circumstances which can, together with their weakness, lead to insanity. One circumstance must not be regarded as the predisposing cause of insanity in a class where other circumstances are to be set against it. Rest is produced by forces that *could* move. Women in their present state are said to be less liable to those forms of insanity which occur in men, and can be traced to intemperance and other excesses. But it is their weakness and consequent servitude which have kept them from those works which lead to those excesses. It is absurd, therefore, to say that sex or its weakness predisposes to [29]insanity. We should say that the numbers of men and of women who go insane, differ little, if at all, and that it is impossible to argue that sex has any influence as a predisposing cause in the production of insanity.

§ 40. **Age considered in connection with the Causes of Insanity.**—It follows from what has been said above, that at certain periods of life men are more prone to go insane than at others. Weakness has to be considered as a cause of disease, but it is quite erroneous to do so unless it is understood with reference to a certain strain. Although an exotic might

not stand the storm so well as the oak, yet in its glass house the wind no more breaks it than it does the giant tree. So the weakness of youth and age must always be considered, in connection with questions of etiology, in relation to a full knowledge of the circumstances to which it is exposed. We should, however, expect that the type of insanity associated with different periods of life would differ, and that is actually the case. Children become insane. Wherever there is a mind at all, it may become liable to mental disorder. All the diseases which occur in adults, with the exception of general paralysis, have been observed in children. Idiocy, however, is the most common form of insanity in early life; and not unfrequently, where unusual manifestations of mental activity have occurred at birth, after the convulsions caused by dentition or gastro-intestinal irritation, imbecility has taken the place of the undue excitement of the faculties. Instances of insanity, however, previous to puberty, are rare. It is not uncommon in girls upon the appearance of the menstrual secretion, especially if it is delayed beyond the usual time for making its appearance. Insanity is most frequent at the age when man is at his best: from 25 to 50 is the stratum of time in which his activity is greatest, and in which, owing to the fact of his activity, he is most exposed to the exciting cause of the disease. "Man's first word," says Hare, "is 'Yes;' his second, 'No;' his third, 'Yes.'" And so the diseases of a life correspond to this process of thought. Idiocy is the absolute affirmation—the very acme of assent. Mania is a universal "No;" and senile dementia is the same blank assent again. Acute forms of mental disease in advanced life are rare. It requires strength to go mad.

§ 41. **Education considered in connection with the Causes of Insanity.**—It has been usual to allude to education as a predisposing cause of mental disorder; and it is true that certain kinds of mental efforts are deleterious. But education is not simply learning to read. The most important lesson a man can learn in youth is to be healthy. Not always to be thinking one needs a pill, but to be thoroughly unconscious of the existence of a stomach, which, like one's friends, only obtrudes itself when it is going to annoy. That

education should not make a man clever and bad, is surely true; and that it should try to make him clever and good—which is the exact antithesis of insanity, which is bad and stupid beyond the reach of punishment—is surely the true function of education. But education only too often is conducted upon such universal principles that individuality is altogether overlooked; and very frequently tendencies which were latent, and might in time and with careful training have been eradicated, are made actual and living, and lead to insanity, by and through a pernicious system of education. [30]Education, properly conducted, might do something to make a compromise between the future and the past. Men inherit debts from nature which many have to pay with death, many with insanity. Education ought to husband and cultivate the assets, and too often it only hastens the end, which is on its way. This is not the place, however, to deal with the large and important question as to how far education might be made to overcome the influence of hereditary taint. Much, we feel certain might, with intelligence and judicious care, be done by means of a wide and sanitary culture. As to the best means of this, however, whether it is likely to be best accomplished, as several able educationists, amongst whom Mr. Herbert Spencer and Professor Huxley may be mentioned, by means of a training in scientific facts, or by means of books, as the world has by its practice affirmed, it is difficult to say; and even if the answer to this question could be given in a few lines, this is not the place to write them.

§ 42. **Hereditary Tendency.**—This subject has already been dealt with, but it requires a prominence in the minds of those who would understand the real science of causality in relation to mental disease, which will warrant some repetition. The fact of hereditary transmission has long been known to breeders and florists, and common people have well understood the transmission of physical beauties, physical diseases, and physical defects, from generation to generation; yet somehow there seems to have been a peculiar blindness to the fact that mental characteristics and mental diseases, as dependent upon physical conditions, must also be inherit-

able. Lessing, however, with that prevision of science which is often found in poets, had perceived the irrationality of such a proposition, and one of the characters in his "Nathan the Wise" says:

> "How! and shall Nature then have formed in me
> A single feature in thy brother's likeness,
> With nothing in my soul to answer it?" [1]

And now its truth would not be denied by any person of even trivial culture. Sir Thomas Browne has put the whole question well and quaintly in his "Religio Medici:" "Bless not thyself only that thou wert born in Athens, but among thy multiplied acknowledgments, lift up one hand to heaven that thou wert born of honest parents, that modesty, humility, and veracity, lay in the same egg and came into the world with thee. From such foundations, thou mayst be happy in virtuous precocity, and make an early and long walk in goodness; so mayst thou more naturally feel the contrariety of vice unto nature, and resist some by the antidote of thy temper." [2] But this is not only true of vice and temptation, but of insanity and its occasions. By such inherited health, a man may walk through events which would cause mental ruin to many, and fear no evil: he may withstand most of the causes which would shake the mental integrity of most. In one sense, all insanity might be looked at as hereditary. To a man of perfect health, the world could have no cause for insanity. Causes for tears, causes for laughter, causes for exertion, and causes for rest, but causes for none of these in such excess as to wreck the mind thereby. It is the seeds of disease which are in one which grow up under tears, or blossom under joy. But there is a narrower sense in which the phrase hereditary predisposition is understood. Some nervous disease or insanity in the father leads to the same disease, or some similar disease, in the children. So powerful is hereditary predisposition, that in almost every case one can find that the taint has a history. It seems like a river that may dip under the earth for a while,

[1] George Elliot, in her poem "The Spanish Gypsy," has the same thought unfolded into other words.

[2] Hume said that his naturally happy disposition was of more value to him than a thousand pounds a year.

but will flash out on the plain of Time a little further down. But it is not insanity only that predisposes to insanity. It grows from slips as well as from the bulb. And epilepsy, hysteria, and neuralgia in the parent, are found to predispose to insanity in the children. Nay, more, it is certain that diseases which do not in the parent specially affect the nervous system, as phthisis, scrofula, syphilis, do in the offspring, in so far as they conduce to a delicate nervous constitution, predispose to insanity. The question as to the hybridity of diseases, if we may so say, is one of much interest and importance. Like other hybrids, however, the prolificacy of the insane seems limited.

§ 43. **Statistics of Hereditary Tendency.**—As to the proportion of cases in which hereditary predisposition is observable, many opinions have been hazarded. Dr. Burrows says that he found an hereditary tendency in six-sevenths of his patients. Moreau argues that it is detectable in nine-tenths of the insane. Esquirol stated that a predisposition to insanity is more readily transmitted through the mother than through the father; and Dr. Pagan[1] has observed that children born before the appearance of mental alienation in the parent are less likely to suffer from the disease than those born after the outbreak of the first attack.

§ 44. **Pregnancy considered as a Cause of Insanity.**—Pregnancy may be regarded as a predisposing cause of insanity. Many cases are on record in which insanity has come on during pregnancy in which suicide has been attemped; and in many cases the nervous irritability, and other peculiarities which occur in the course of gestation, have passed into one of the forms of monomania. Many women look forward with dread to the approaching confinement, which, together with the effect produced by the influence of [31]the organs of reproduction, is sufficient in many cases to bring on insanity.

[1] Pagan's Medical Jurisprudence, p. 36.

§ 45. **Delivery considered as a Cause of Insanity.**—Delivery has, however, a better right to be considered as a predisposing cause of mental derangement. In the divisions of puerperal insanity into that which occurs during pregnancy, that which occurs at the period of parturition, and that which occurs during lactation, the greater number of recorded cases fall under the second of those three heads. At this period women are peculiarly liable to attacks of insanity. Frequently the form of insanity, or the kind of delusion, is in some way connected with, and dependent upon, the peculiar condition of the organs affected. In many cases the mothers show a strong aversion to see their children, and often the hatred is so intense as to prompt to acts of violence. The explanation of the frequency of insanity at this period, on the ground that the loss of personal charms, and the consequent extinction of the hope of being still the object of devotion as heretofore, may lead to morbid feelings through mortified vanity, which is given in some books, is absurd and unsatisfactory. Surely the physiological causes are sufficient to account for the predisposition which exists at this period. This seems borne out by the fact, that women at the menstrual period are more prone to attacks of mental disease than at other periods—a circumstance which probably is the cause of the physiological connection between the moon and lunacy. When lactation ceases, as well as during the time when women are nursing children, there is a tendency to mental excitement which frequently passes into insanity. Many women are insane at the period of giving birth to children, and at no other time suffer from mental unsoundness. The cure of puerperal insanity is very frequent, and we believe that, in good hands, no case of childbirth insanity would last more than a few months if it was treated in its earlier stages. All these physiological conditions which occur at delivery, during lactation, when lactation ceases, and at that period of life when the menstrual secretion stops, render women more susceptible to the influences of the exciting causes of insanity. To assert that the loss of good looks, and the sorrow of wounded vanity consequent thereon, have not any influence in predisposing to mental disease, would merely be *to assert.* But that it ought to be [32]considered as a prominent proxi-

mate cause of insanity, where there are adequate physiological conditions to account for the genesis of the disease, is to mistake the relative importance of two classes of causes.

§ 46. **Religion considered in connection with the Causality of Mental Disease.**—Some writers have placed religion amongst the list of those things which predispose to insanity. They might, with equal justice, have placed *life* as the predisposing cause of all insanity. It is true that certain forms of religious excitement do tend to foster insanity, but it is equally true that certain kinds of life lead directly to the abnormal condition of mind which we call insanity. It seems to us that religion should be looked upon not as a cause conducing to disease, but as one of those causes which has a most sanitary effect, not as a series of circumstances tending to mental degeneracy and insanity, but as a series of circumstances directly tending to mental improvement and health. Yet we do not deny the fact, that those somewhat excited religious gatherings which have taken place of late years, in which the Lord Jesus is expected to be found in the midst of many fears, much shouting, and an occasional attack of hysteria, do tend directly to mental unsoundness. We would not argue that the extreme form of High-Churchism—the most material form of Christian worship, in which symbolism really often loses its soul, and has nothing but the body left—that the constant and all-absorbing exercises of that form of religion, accompanied as it is with much unhealty self-examination, and a self-bruising asceticism, will not in many cases predispose to insanity. But we do argue, that religion in its fullest sense, and religion as patterned in the life of Him whose name is connected with the creed of this country at the present time, is not calculated to predispose to insanity, but that, on the contrary, it is calculated to predispose to the most perfect mental health, that it is necessary to that perfect health, and that the human mind finds in that creed, when it is thoroughly understood and earnestly believed, the most thorough and perfect guide to a life of soberness and chastity, faith and well-doing, which are the very conditions of health in the individual practicing according to these rules, and of its transmission to those that are to come after

him.[1] It is the fashion among a certain class of thinkers to hold that sanity consists in the absence of all prejudices—even Voltaire's one prejudice, the *préjudice de Dieu*—and so to those persons religion and its systems seem prejudice-manufactories, [33] and thus causes which predispose to insanity. Prejudices! If it were not for prejudices, not a man on earth would be sane, not a man on earth would *be*.

47. **Of Predisposition generally.**—To sum up what has already been said as to the relation of remote causes to the diseases of the mind, we may say that whatever has the effect of debilitating the physical structure, or the moral and intellectual faculties, has more or less tendency, according to the character of the individual, to predispose to mental disease. Moral vices, excessive mental strain, great anxiety, and unusual excitement, all predispose to alienation of mind. Individual temperament, in the widest sense of the term, must be taken into consideration in every case.

§ 48. **Proximate or Exciting Causes.**—An exhaustive treatment of the exciting causes of insanity can only find place in a work on the pathology of mind. In this place, the mention of some of the causes which lead directly to insanity must suffice. It must be remembered that the cause which in one case may be looked upon as exciting, must, in another case, be regarded as predisposing. Malformations of the brain—dependent, it may be, upon morbid changes in the skull, the defective development or the arrest of growth of this organ—are all causes which operate powerfully to produce mental unsoundness. The brain-weight in microcephalous idiocy is not only small when compared with the brain-weight of healthy individuals, but the relative weight of the brain to the body of the microcephalous idiot is very much less than the relative weight of the brain to the body of a person in normal health. Injuries to the head which have produced lesion in the structure of the brain, or which have caused disease which has led to a partial disorganization of

[1] Mr. Disraeli, in his speech delivered to the students of the University of Glasgow (19th November, 1873,) said: "Religion invigorates the intellect and expands the heart."

the part, may be looked upon as exciting causes of mental unsoundness.[1] Tumors in the brain, and many of the alterations produced by organic disease in the cerebrum and its membranes, also proximately conduce to insanity. Starvation and exposure to intense pain, extreme fatigue, as well as apoplexy, palsy, epilepsy, and convulsions of all kinds, are, as it were, open doors to insanity. The sympathy which exists between every part of the bodily organism—

> "Each part calls the furthest brother,
> For head with foot hath private amity"—

leads in many cases to abnormal mental action, either on account of functional derangement, or on account of the structural disease of [34]some remote part. But there seems to be a more intimate "private amity" between the brain and its neighbors, the stomach, the liver, the intestines, and uterus, than there is between the head and foot. Insanity grows like a graft upon many other diseases, but in certain cases the existence of insanity at the same time as a bodily disease does not seem compatible. Insanity arises not unfrequently upon the suppression of an accustomed discharge, and often accompanies irregularities in the menstrual secretion.

§ 49. **The Moral Causes of Insanity.**—Intimately connected with the causes above enumerated are those to which the name "moral" has been given, and which operate banefully upon mental health through the brain. Strong emotions and passions, every circumstance in mental life which is calculated to make a deep impression, and appropriate a large amount of the free mental energy, may, upon occasion, become a cause of insanity. Attention, whose "very quality," according to Goethe, "is that at the moment it makes a nothing all"—attention, which really is the faculty which distinguishes the great man from the small, so that any man might be great if he only knew how and to what to direct his attention, may, where it too constantly makes "a nothing all," degenerate into the mental unsoundness of a fixed idea. Disappointed love, terror, pride, ambition, anger, jealousy,

[1] See two interesting articles in vols. 1 and 2 of the West Riding Asylum Medical Reports on "Cranial Injuries and Mental Disease."

avarice, all that is good and noble, as well as all that is mean and disgusting, may be a cause of insanity, and the very intensity and constancy of the emotion are the elements which tend to make it the bane of this fever-life, rather than the antidote. "The wine is good, but the vessels are old or crazy." It is to be remembered that in relation to such cases the effects are very often very near in point of time. Terror, that in one not predisposed to mental disease might cause convulsions, will often, in one foredoomed to rave, cause an almost immediate attack of mania. Joy, when very intense, sometimes causes insanity. The "happy medium" must have more joy in it than this dangerous extreme, and would lead us "to welcome each rebuff," or, as a somewhat bold author put it, thank God for our corns. A case is on record which tells the story of two lovers who had made each other perfectly happy, and, possibly fearing what Shelley calls "love's sad satiety," killed themselves. The incursion of those diseases which are caused by sorrow or jealousy is somewhat slower. Sorrow not only steals "the natural hue of health from vermiel lips," and "the lustrous passion from the falcon eye," but steals the something which gives [35]passion to the eye and sweetness to the vermiel lip. Excessive grief saps the foundation of the mind, as it were, with tears, and every room-faculty gets damp and mouldy. The individual seeks seclusions, hugs the painful ideas, foregoes his usual exercise, avoids a laugh as he would a devil: he loses appetite, digestion, and sleep, and illusions and delusions spring from such soil.

§ 50. **Causes which Conduce to Epidemic Insanity.**— We have already examined some of those general causes, which are the great outcomes of human nature in time, as predisposing to insanity. We have shown the extreme difficulty of estimating the effect of those widespread causes; but, notwithstanding the difficulty, it is necessary for the medical querist to make the endeavor, especially with regard to such causes as are to be found in intense political excitement and enthusiasm; remembering, however, that it is brains, which, like casks that have lost their hoops, are constitutionally weak, that give way under the influence of such ex-

citement. That there is some peculiar sympathy between man and man which emphasises individual sentiment, which modifies individual thoughts, is a fact. It is proved by the extraordinary conduct of mobs, the enthusiasm and death-forgetfulness of armies, by the knee-made fervency of worshipping congregations. That the excitement which exists at certain periods of political importance should be increased to an extraordinary extent by its widespread participation with others, was what we were prepared to expect, remembering the well-marked tendency of excitement to increase until actual exhaustion draws the rein. But none could have anticipated the extraordinary outbursts of excitement which have taken place, and which are chronicled in the histories of nations—excitements which have all the marks of frenzy, and might easily be considered as a species of insanity. Even in our own country, in times not very long gone by, the nerves of cool, wise men quivered with the sympathy of humanity, because other men's hearts beat, and other men's brains throbbed with party feeling and political fervor. Just so a harp, untouched by human hands, will send out a little sound, if there is the music of a brass band near. But how infinitely greater was the shock of such world-actions as the Revolution in France. Esquirol has observed, that the more prominent events of French history during the half century before the date at which his words were uttered might be illustrated by cases in the lunatic asylums of that country. Just as a storm tears down trees, and the rivers carry them [36]to the sea, where they are buried and made stone mummies of, and are for times to come a record of the storm and of the trees it blew over—so in the wards of insane hospitals may indices to the political storms of the past be found at the present time. The extraordinary influence of conjoined action, of conjoined excitement, or of conjoined depression, is well understood; and that it leads to insanity among many, as if by the continuance of the same powerful influence, is a fact. That such influences may account for epidemics of insanity suggests itself as a probable solution of that psychological difficulty. We know that certain common physical influences powerfully affect the frequency of epileptic fits and paralytic disorders. We know, however, that common mental in-

fluences more powerfully affect such nervous disorders as hysteria; and it is to be argued that the same relation of causes to the persons influenced would produce effects corresponding to the symptoms of epidemics of insanity.

§ 51. **Epidemic Insanity.**—Scarcely any subject in the whole scope of medico-psychological study is more interesting than that of epidemic delusions. History is full of the most curious instances of wide-spread morbid sympathy. In the thirteenth century, the mania of asceticism was in vogue, and people scourged themselves in good earnest, and suffered others to scourge and flog them, for their souls' welfare. The story of the Flagellants is well known, and the episode of those who came over to England in the reign of Edward III. (1350,) and who, with their banners, their music, their processions, but most of all by their shrill-voiced scourges, tried to make converts to this new evangel. Then came the "Dancing Mania," with St. Vitus for its patron saint, and the Convulsionnaires of St. Mêdard. All these manifestations were closely analogous to epidemics of hysteria, with which most of us are familiar. Hysteria is due to the free exercise of emotion in independence of volition. It is a regnancy of the feelings while the will is still alive: it is a governance of volition by emotion instead of by intellect. But every one knows that one case of hysteria makes many. When it occurs in a school or a convent in one case, the strength which the tendency to imitate has in a weak mind produces innumerable instances, and we have an epidemic of hysteria. "There was an instance," says Dr. Carpenter, "a good many years ago, in a factory in a country town in Lancashire, in which a young girl was attacked with a violent convulsive fit, brought on by alarm consequent upon one of her companions, a factory operative, putting a mouse down inside her dress. The girl had a particular antipathy to mice, and the sudden shock threw her into a violent fit. Some of the other girls who were near very soon passed off into a similar fit; and then there got to be a notion that these fits were produced by some emanations from a bale of cotton, and the consequence was that they spread till scores of the young women were attacked day after day with

these violent fits. The medical man who was called in saw at once what the state of things was. He assured them, in the first place, that this was all nonsense about the cotton; and he brought a remedy in the second place, which was very appropriate under the circumstances, namely, an electrical machine; and he gave them some good violent shocks, which would do them no harm, assuring them that it would cure them. And cure them it did."[1]

This instance gives a very good indication of the way in which this curious disease manifests itself through the channels of sympathy. Nothing is more curious than this contagion of spirits, and the propagation of this voluntary chorea from one person to another. The ordinary incidents

[1] A Lecture on Epidemic Delusions, by Dr. Carpenter, F, R. S. Delivered in the Hulme Town Hall, Manchester, Dec. 8, 1871. Dr. Carpenter gives some other similar instances in the same lecture. "There are plenty of stories of this kind that I might relate to you. For instance, in nunneries, it is not at all uncommon, from the secluded life, and the attention being fixed upon one subject, one particular set of ideas and feelings—the want of healthy vent, so to speak, for the mental activity—that some particular odd propensity has developed itself. For instance, in one nunnery abroad, many years ago, one of the youngest nuns began to mew like a cat, and all the others after a time did the same. In another nunnery, one began to bite, and the others were all affected with the same propensity to bite. In one of these instances, the mania was spreading like wildfire through Germany, extending from one nunnery to another, and they were obliged to resort to some such severe measures as I have mentioned to drive it out. It was set down in some instances to demoniacal possession, but the Devil was very easily exorcised by some pretty strong threat on the part of the medical man. The celebrated physician Boerhaave was called in to a case of that kind in an orphan asylum in Holland, and I think his remedy was a red-hot iron. He heated the poker in the fire, and said that the next girl who fell into one of these fits should be burnt in the arm. This was quite sufficient to stop it. In Scotland, at one time, there was a great tendency to breaking out in fits of this kind in the churches. This was particularly the case in Shetland; and a very wise minister there told them that the thing should not be permitted, and that the next person who gave way in this manner—as he was quite sure that they could control themselves if they pleased—should be taken out and ducked in a pond near. There was no necessity at all to put his threat into execution. * * * I remember very well that when I was a student at Bristol, there was a ward in the hospital to which it was usual to send young servant girls; for it was thought undesirable that these girls should be placed in the ward with women of a much lower class of Irish women. These girls were mostly respectable, well-conducted girls, and it was thought better that they should be kept together. Now, the result of this was that if an hysteric fit took any one of them, the others would follow suit; and I remember perfectly well, when I happened to be a resident pupil, having to go and scold these girls well, threatening them with some very severe infliction. I forget what was threatened: perhaps it would be a shower-bath for any one who went off into one of these fits. Now, here the cure is effected by a stronger emotion, the emotion of dread of—we will not call it punishment, but of a curative measure, and this emotion overcame the tendency to what we commonly call imitation."

of a hysterical attack are very well understood, and come only too frequently under the observation even of non-medical individuals. It may with truth be called a voluntary insanity. It is an attack which, as we have seen, can be put an end to by an exercise of the volition of the person affected; but it may, like other unhealthy indulgences, pass from a voluntary into an involuntary disease, and when that is the case, it is undoubtedly to be classed with mental disorders. One reason for dwelling at some length upon the subject in this place, is that there is a very close relation between this disease and the epidemic aberrations with which we have here to do. The dancing mania to which we have referred seems to have been an epidemic chorea accompanied by mental symptoms. But the convulsions of the body are not alone propagable in this way: the convulsions or explosions of mind have a singular and strong influence upon the mental life of others. One can see this if one studies the psychology of crowds: one can trace it in the periodical outbreaks of wild superstitions—such as the belief in witchcraft, or spiritualism, and it is even more haggardly visible in strange epidemics of suicide. It is useless to quote the threadbare story of the seven suicides at the Hôtel des Invalides; but what seems to have been a real epidemic occurred at Versailles in 1793. The population of Versailles was at that time 30,000, and in that one year no fewer than 1300 suicides occurred,[1] and this is not by any means the only case of this nature. It is true that the belief in witchcraft is not to be regarded as in itself an indication of insanity, but rather as a proof of ignorance. The ignorant are always the lazy, and they are much more willing to ascribe phenomena to occult causes than to take the trouble to ascertain their real connection with overt facts. A considerable number of the great men of the past have believed in witchcraft. Thus Dr. Johnson held that there was no proof that witches did not exist. John Wesley was a devout believer in witchcraft, and even went so far as to say that if witchcraft was not to be believed, we could not believe in the Bible; and further still, Lord Hale remarked: "That there are such

[1] Art. "Suicide," Dict. Des Sciences Med. Burrow's Commentaries, p. 438.

creatures as witches, he made no doubt at all. For first the Scriptures had affirmed so much; secondly, the wisdom of all nations had provided laws against such persons, which is an argument of their confidence in such a crime." But these instances must be taken only to show that a great man, although he is undoubtedly beyond his age, is yet of it. Has not the tree which throws out its leafy branches far up into the heavens—has it not its roots still in the soil? When, however, these beliefs are epidemic, as they have often been, they are to be classed with other epidemic delusions, the psychology of which has been sufficiently explained.

§ 52. **As to the relation between Structure and Function.**—A more minute analysis of the connection between antecedent facts and consequent mental symptoms, would be ill suited to the general plan of a work on the Medical Jurisprudence of Insanity. An assertion that the connection between organized matter and manifestations of mind is simply that of cause and effect, and is in no way different from the relation between any bodily organ and its function, would, in so far as we are concerned, not be a statement of our belief. Indeed, we would deny any such relation; and although we have no right to enter upon such a discussion in this place, it is our duty to warn the reader not to expect in all cases to be able to detect disorganization of brain, accompanied by symptoms of insanity, and to expect to meet with well-marked cases of insanity where no [37] disorganization of structure is observable. Nor are we to expect to find that there is an invariable proportion between the capacity of the cranium and the amount of mental endowment. It is not so in the race, nor in the individual. This is proved by the researches of Virey, Parchappe, Desmoulins, and others. Nor, where it does occoccur, are we to look for a traceable proportion between the two classes of phenomena. Many die insane, the insanity simply having been functional derangement through the sympathy of living parts, and no trace of structural decay is observable as a post-mortem symptom.[1]

[1] See further, as to the cause of insanity, Dr. Ray's Essay in his Contributions to Mental Pathology.

CHAPTER III.

MENTAL UNSOUNDNESS AND CLASSIFICATIONS OF INSANITY.

§ 53. **Definitions of Sanity and Insanity.**—[38]Before it is possible clearly to understand the meaning of the term unsoundness of mind it is, perhaps, necessary to understand what is meant by the term sanity. A deviation can only be appreciated when that from which it is a deviation is known. Now, we say that a person who conducts himself in every respect like his neighbors is sane. A man who is aware of his position, who is conscious of the significance of the objects which surround him, who has certain ends in view, and whose conduct is influenced by his desire to attain those ends—a man who in all these things resembles the ordinary people of the class he lives amongst, may be regarded as sane. Any judgment upon a question of sanity or insanity must be made upon the ground of experience, and our experience of the ordinary conduct of the bulk of mankind must guide us in determining the questions which arise as to sanity or insanity of individuals. Thus, before the time of Galileo, had a man believed that the earth went round the sun, and had that belief been founded upon no evidence, but arisen as delusions generally do, the experience of the conduct of belief of the bulk of mankind would have led to the conclusion that this man was mad, and it would have been right. For it was not merely the ordinary belief of mankind that the sun went round the earth, which has since been found to be an error; but it was the belief of mankind that it is usual for ordinary men to be induced to change a belief from ene tenet to another, not arbitrarily, but upon some ground; and if no such reason as would influence the minds of ordinary men exists, then the test of our experience would lead us to determine that this man's conduct was not that of other men. As, therefore, we give the name of sane to the set of

circumstances which constitute the conduct of the latter, we give the name of insane to the set of circumstances which constitute the conduct of the former. This man would not have been called mad because he believed the truth, but because he believed a thing which he had every reason not to [39]believe. A belief in a truth may be a delusion. A delusion is just a prejudice in the flesh.

§ 54. **Different Points of View of Lawyers and Physicians.**—It has been said that by madness "a lawyer means conduct of a certain character, a physician means a certain disease one of the effects of which is to produce such conduct."[1] And it has been argued that these two different definitions may have caused the widely different conculsions at which the members of those two professions have arrived. But, perhaps, there is more ingenuity than truth in this description. Medical men infer the existence of disease from symptoms. Some of the most important symptoms which are indicative of the presence of mental disease are to be found in the acts and words of an individual. Even at the present time the greatest difficulty would be felt by the most accomplished expert in determinating the presence of mental disease without the cognizance of these facts, and a diagnosis would be impossible under such circumstances unless he had the advantage of viewing the expression which has resulted from the acts and thoughts of the individual, just as a certain precipitate results from certain kinds of chemical action. Seeing, then, that medical men infer the presence of the disease which they call madness from conduct of a certain character, and that lawyers, according to Mr. Fitjames Stephen, mean by madness "conduct of a certain character," although they really mean the something which underlies that conduct, the distinction drawn is rather apparent than real. The cause of the difference of opinion which has been described would more probably be found in other circumstances. That lawyers have been too apt to regard insanity as one simple disease, and the fact that thinking thus, and having as they believed found a good legal test for the irresponsibility of those who

[1] Fitzjames Stephen's "Criminal Law of England," p. 87.

labored under it, they applied this test to other diseases as distinct from that to which it was in the first instance applicable, as toothache is from lock-jaw, may to some extent account for the slow progress which that profession has made towards a correct scientific knowledge of this most intricate subject. But lawyers are most conservative of law. When the Judges were asked whether capital punishment should be abandoned for the theft of the amount of five shillings they all said "No." We laugh at them now, and yet in other things the Judges of the present day are possibly quite as conservative. As a rule, perhaps, the opinion [40] of a man who has worked long and successfully under a certain system is almost valueless with regard to its faults or merits. Reformers are either men who have suffered under a system, or boys. These tendencies may have led to the tardiness of the legal profession to acknowledge more than one kind of insanity, and to a refusal, by its members, to acknowledge a test—which may with reason have been applied to the determination of the responsibility and capacity of those persons who labored under one phase of this disease—as utterly inapplicable to many persons who were affected with other kinds of insanity.

§ 55. **The Unscientific Study of Insanity as a Cause of the Slow Progress of the Medical Jurisprudence of Insanity.**—But, as we have seen, medical men are not blameless. Physicians with the amplest opportunities for observation have neglected to become thoroughly acquainted with the disease which it was their duty to treat. It is only in recent times that the pathology of insanity has occupied the attention of those who have the means of becoming acquainted with it. Should those careful researches which are at present being prosecuted in our large hospitals for the insane make the progress that the zeal of those conducting them gives us a right to expect, we may hope for better things in future from medical witnesses, and, as a direct consequence, we may expect a more intelligent recognition of undoubted scientific results upon the part of the legal profession. As yet, however, the knowledge of the pathological changes which take place in various kinds of mental disease is very limited. And some anomalies have arisen in the progress of

the research which would seem to indicate results which would scarcely have been anticipated: we refer to the frequent discovery of structural changes in the brain which have given rise to no derangement of the functions of that organ, and in other cases the observation of disturbed functions without the discovery of much if any organic change.

§ 56. **The necessity for a Classification of Insanity.**— Some classification of the various kinds of mental disease is absolutely necessary. And it is of more importance to those persons who look at insanity from the legal than to those who look at it from the medical point of view. However, there are very many occasions upon which medical men are called upon to give evidence as to the soundness or unsoundness of mind, and for those who are so called to bear testimony such a classification will not be without its value. Those occasions are likely to increase rather than to diminish in number, for a large section of the medical profession [41] seems to think that insanity is on the increase, and those who are of opinion that it is not, account for the apparent increase by the fact that in the more thorough and wide-spread diffusion of medical knowledge many diseases are now recognized as insanity which were not formerly regarded as belonging to that class of disease. When a man makes a will and dies, his relations who are not mentioned in it may dispute its validity. Was the individual, at the time he made his will, in such a mental condition as to possess a testamentary capacity? In such a case the Court of Probate will have recourse to the evidence of medical witnesses. When a man or woman contracts a marriage which is regarded by his or her friends as unaccountable, or which may, by the issue from it, deprive the said friends of a contingent reversion, the question as to whether the person contracting was sane or insane at the time, whether he or she could or could not give a valid consent—consent being the essence of a contract[1]—will arise, and the evidence of medical witnesses will be required. So if a man squanders his money or commits a crime, the evidence of physicians will be requisite to determine the fact of his sanity or insanity. Besides, there are cases in which in-

[1] 1 Powell. Contr., pp. 9 and 10. See Hardman v. Booth, 1 Hurl. & C., pp. 803, 807.

sanity is feigned, and it is necessary that medical men should be able to distinguish between the genuine and the simulated. Now, too, no insane person can be incarcerated in a lunatic asylum without the certificates of one or two medical men.[1] In all these cases it is necessary that the individual physician who is called upon to ascertain the mental condition of another individual should have a somewhat thorough knowledge of insanity, and all thoroughness and clearness is to be best attained by careful classification.

§ 57. **Of Classifications.**—Every writer who deals with psychological questions seems called upon to venture upon a new classification of mental diseases, and in consequence we find that there is really less clearness and less thorough comprehension in relation to this matter than would have resulted from the want of all classifications. In many of the classifications which have already been proposed, there are characteristics of excellence, but in none do we find thorough and exhaustive grouping. Much dispute has arisen as to the basis of classification, and it can easily be understood that while there is still doubt and dispute as to what ought to be classified, there can be little that is satisfactory in the result. It may, however, be useful to the reader to have an opportunity of comparing some of these classifications, and we will give one or two of these, with the names of the authors who have proposed them. For all practical purposes, however, mental diseases may be divided into two classes: 1st, into those which are dependent upon arrested development or diminished activity of the faculties; and, 2d, those which are due to some functional derangement or organic lesion in the brain or the nervous centres subsequent to what may be regarded as normal development. The former is marked by defective energy or inertness of mind, the latter by undue activity and excitement of the mental faculties. Perhaps the best practical classification of mental diseases for the purposes of those who would become acquainted with them in connection with the legal relations of those who labor under them is that which is given on the following page. It is somewhat the same, in its main features, as that adopted by Esquirol.

[1] 16 and 17 Vict., c. 96, § 4, 7.

[42]

- **Unsoundness of mind.**
  - **From defective development or diminished activity or inertness of the faculties.**
    - Congenital, or occurring in childhood. → **Amentia.**
      - 1. Idiocy.
      - 2. Imbecility.
        - α. General.
        - β. Intellectual.
        - γ. Moral.
    - Occurring in after-life, when the faculties have arrived at a normal state of development. → **Dementia.**
      - 1. Consequent on mania, mental shock, or injuries to the brain.
      - 2. Senile.
  - **From undue excitement or activity of the faculties.** → **Mania.**
    - 1. General.
    - 2. Intellectual . . . .
      - α. General.
      - β. Partial.
    - 3. Moral . . . . .
      - α. General.
      - β. Partial.

Another useful classification may be made by a combination of the classifications of Esquirol and Greisinger. It is used by some of our lecturers on mental disease.

Insanity.	States of Mental Weakness.	Amentia.	Idiocy. Imbecility. Moral Insanity.
		Dementia.	Acute Dementia. Simple Dementia. Chronic Dementia. Paralytic Dementia. Epileptic Dementia. Organic Dementia. Senile Dementia.
	States of Mental Exaltation.	Mania.	Acute Mania. General Mania. Chronic Mania. Hysterical Mania. Puerperal Mania. Recurrent Mania.
		Monomania.	Monomania of Pride. Monomania of Vanity. Monomania of Suspicion. Erotomania. Dipsomania. Kleptomania. Pyromania. Homicidal Mania.
	States of Mental Depression.	Melancholia.	Acute Melancholia. Simple Melancholia. Religious Melancholia. Delusional Melancholia. Hypochondriacal Melancholia. Nostalgic Melancholia.
	.....	.....	

§ 58. **Dr. Skae's and Dr. B. Tuke's Classification.**—It may interest the reader to have his attention called to a classification which has found favor with a certain school of medical psychologists in this country. The scheme was propounded by Dr. Skae, and has been modified by one of his pupils. While we quote the classification, we cannot but regard it as in many aspects unsatisfactory, and open to the many faults which have been found with it by Professor Laycock[1] and other writers.

[1] Professor Laycock's "Nosological Index," first published in his work on "Medical Observation and Research," 2d edit. p. 342, although eminently suggestive, is of too complex and theoretical a character to be available for practical purposes.

Class I.—Insanity resulting from arrested or impaired development of the brain.	Idiocy, congenital and acquired.
Class II. Idiophrenic Insanity.	(1) Sthenic and Asthenic Idiopathic Insanity. (2) Phrenic Insanity (inflammatory.) (3) General Paresis. (4) Paralysis with Insanity. (5) Traumatic Insanity. (6) Epileptic Insanity.
Class III. Sympathetic Insanity.	Epileptic Insanity. Insanity of Masturbation. Insanity of Pubescence. Climacteric Insanity. Ovarian and Uterine Insanity. Insanity of Pregnancy. Puerperal Insanity. Post-connubial Insanity. Hysterical Insanity. Enteric Insanity.
Class IV. Anæmic Insanity.	Leucopsitos (from aberration.) Post-febrile Insanity. Insanity of Lactation.
Class V. Diathetic Insanity.	Insanity of Tuberculosis. Syphilitic Insanity.
Class VI. Toxic Insanity.	Cretinism. Delirium Tremens. Insanity of Alcoholism. Insanity from Opium-eating.
Class VII. Metastatic Insanity.	Rheumatic. Pellagrous. Metastatic Insanity from healing of long-established issues.

59. **These Classifications Criticized.**—[44] In the first of these methods the mental peculiarities of the patient are the ground of classification; in the latter the mental symptoms are put aside and disregarded, and the forms of disease are classified according to their supposed pathological causes and the relation of these causes to the bodily organism.

No classification is perfect. We must endeavor to obtain that which will be most useful to those who would treat disease, and to those who would understand in what cases mental aberration or defect will modify the relations of an individual to his fellow-countrymen, to his property, and to the State. The classification quoted above, which is based upon the pathological cause of the disorder, has a look of science about it which will deceive many. It is a fact proved by the everyday experience of those who have to do with mental disease that we find many patients whose insanity, although resulting from exactly similar causes, differs the one

from the other in every possible particular. Besides, is it not evident that, to arrive at any conclusion with regard to the cause, we must take into consideration the mental peculiarities of the patient, and thus rise to the classification which pretends to be independent of mental symptoms, through the very classification of peculiarities of mental condition which it pretends to discard? In the above classification, it is obvious that there are grave mistakes, which present themselves even to those who are only partially acquainted with nosology. Thus, to place Idiopathic Insanity as a sub-class under Idiophrenic Insanity shows how weak the system is. A classification which is understood to be framed according to pathological causes has taken care to have a class where all maladies which cannot be thus classified are to be placed. How large this class is it is impossible to say, but any classification which has under it a class which it is impossible to classify seems to us as satisfactory in its way as an argument which demands the conclusion as a datum. Again, under Class 3, Sympathetic Insanity, we find the sub-classes Climacteric Insanity and Post-connubial Insanity. To pretend to classify diseases according to their pathological causes, and then to state as a cause a whole system of life, or a bodily condition existing for years, is surely unphilosophical. It would be as correct to give as a sub-class "insanity arising from previous conduct." But the errors are too many to allow us to do them the justice of pointing them out, and too obvious to require it.

§ 60. **Dr. Maudsley's Classification.**—It may not be useless to note one or two other classifications of insanity. Thus Dr. Maudsley adopts the following:

I. *Affective or Pathetic Insanity.*

1. Maniacal Perversions of Affective Life (*mania sene delerio.*)
2. Melancholic depression without delusion (simple melancholia.)
3. Moral Alienation proper. Approaching this, but not reaching the degree of positive insanity, is the insane temperament.

II. *Ideational Insanity.*

1. General.
   - *a.* Mania.
   - *b.* Melancholia. { Acute. / Chronic.
2. Partial.
   - *a.* Monomania.
   - *b.* Melancholia.
3. Dementia. { Primary. / Secondary.
4. General Paralysis.
5. Imbecility.[1]

§ 61. **Dr. Hammond's Classifications.**—Again Dr. Hammond, in his valuable work on Diseases of the Nervous System,[2] gives the classification which was agreed upon at an international congress which met at Paris in 1867. It is as follows:

I. *Simple Insanity*, embracing Mania, Melancholia, and Monomania, (thus negativing the claims of Monomania to be considered a distinct disease,) Floating Insanity, Moral Insanity, (whose independent existence is thus also negatived,) and Dementia consequent on the above types.
II. *Epileptic Insanity.*
III. *Paralytic Insanity*, which is treated as a distinct disease.
IV. *Senile Dementia.*
V. *Organic Dementia.*
VI. *Idiocy.*
VII. *Cretinism.*

But although Dr. Hammond refers to the classification just quoted, it can scarcely be with entire approval. Indeed, it is difficult to see upon what principle such a grouping could have been made; and it seems to us entirely illogical. Dr. Hammond's own classification has greater merits. He divides insanities as follows:

I. *Perceptional Insanity*, "characterized by the tendency to the formation of erroneous perceptions either from false impressions of real objects, (illusions,) or from no external excitations whatever, (hallucinations)."

[1] See Physiology and Pathology of Mind. London: 1867.
[2] New York, p. 337.

II. *Intellectual Insanity*, characterized by delusions.[1]
III. *Emotional Insanity.*
IV. *Volitional Insanity.*
V. *Mania.*
VI. *General Paralysis.*
VII. *Idiocy and Dementia.*

This classification has been adopted by Mr. Dudley Field in his essay on "Emotional Insanity,"[2] in so far as the first four classes are concerned. In this way he would, we suppose, regard mania, general paralysis, idiocy, and dementia as properly belonging to one or other of the first four classes.

For all practical purposes, however, perceptional insanity might be left out of consideration, as it is according to Dr. Hammond productive only of illusions and hallucinations, which if they are irremovable by evidence, or really indications of insanity, at once pass into the category of false beliefs or delusions, and indicate the existence of lesions in the ideational centres. We come, then, ultimately, only to three forms of insanity—that which is connected with the emotions or feelings, that which is manifested in relation to thoughts or ideas, and that which affects the volition or will.

§ 62. **Dr. Bucknill's Classification.**—One of the most recent attempts at classification is that of Dr. Bucknill, whose position as one of the ablest leaders of medico-psychological thought in this country entitles his classification to an attentive consideration, which it should have commanded by its own intrinsic merits. Dr. Bucknill's classification was originally published in the "Lancet," but it is now appended to Drs. Bucknill and Tuke's "Psychological Medicine."[3] It purports to be founded on pathogenetic relations of morbid mental states, while under these are grouped the various ætiological forms of insanity as "genera," these genera being

[1] Dr. Hammond, in distinguishing illusions and hallucinations from delusions, said: "Illusions and hallucinations may exist, and the individual be perfectly sensible that they are not realities. In such cases, the intellect is not involved. But if he accepts his false perceptions as facts, his intellect participates, and he has delusions. A delusion is therefore a false belief."

[2] Albany Law Journal, 3 May, 1873.

[3] 3d ed., p. 801.

differentiated by various "species" according to the pathological conditions of the brain and nerves, the blood and nutrition. It is as follows:

Classes of Psychical Phenomena.

1. Melancholia.
2. Mania.
3. Dementia.

Sub-Classes of Psychical Combinations and Transmutations.

1. Melancholia, simple.
2. " combined with excitement.
3. " with stupor *(dementia attonita.)*
4. " mania and dementia alternating *(folie circulaire.)*
5. Mania, simple.
6. " with depressing emotions.
7. " intercurrent with melancholia.
8. " intercurrent with dementia.
9. " alternating with sanity (recurrent mania.)
10. Dementia, simple and primary.
11. " consecutive on mania or melancholia.
12. " congenital (idiocy and imbecility.)

Orders of Pathogenetic Relations.

1. Simple insanity (ideo-encephalic.)
2. Allied Insanity.
3. Sequential Insanity.
4. Concurrent Insanity.
5. Egressing Insanity.
6. Metastatic Insanity.
7. Climacteric Insanity.

Genera of Pathogenetic Relations and Simple Insanity.

1. Insanity from hereditary predisposition.
2. " from moral influences.
3. " from intellectual overwork.
4. " from direct cerebral injuries.
5. " of general paralysis *(encephalo rachites.)*

Allied Insanity, influenced by other diseases, but independent.

1. Insanity with cardiac disease.
2. " with pulmonary disease, emphysema, phthisis, etc.
3. " with enteric disease.
4. " renal or vesical disease, etc., etc.

Sequential Insanity, caused by other disease which has subsided.

1. Insanity following idiopathic and exanthematous fevers.
2. " following inflammations and pneumonia.
3. " following injuries to the cerebro-spinal axis, apoplexies, etc.

Concurrent Insanity, caused by other diseases or diseased conditions which continue to exist.

1. Insanity from cachexias (syphilitic, clorotic, cretinic, etc.)
2. " from epilepsy.
3. " from chorea.
4. " from alcoholism.
5. " from masturbation.
6. " from starvation.

Egressing Insanity, growing out of the former disease, of which it is an exaggeration.

1. Insanity egressing from hysteria.
2. " egressing from ecstasy.
3. " egressing from hypochondriasis.

Metastatic Insanity, from the shifting or ceasing of other disease or suppression of discharges.

1. Insanity from rheumatism.
2. " from erysipelas and skin diseases.
3. " from suppression of habitual discharges, hæmorrhoids, or ulcers.
4. " from suppression of the catamenia.

Climacteric Insanity, caused by natural conditions of development and decline.

1. Insanity of the pregnant and puerperal state.
2. " of pubescence.
3. " of climacteric decline.
4. " of old age.

Species of Pathological Conditions differentiating the genera by Pathological conditions of the brain and nerves, of the blood and the nutrition.

Neurotic.
1. Hyperæsthetic.
2. Anæsthetic.
3. Neuralgic.
4. Sympathetic.
5. Apathetic.
6. Hypertriptic.
7. Atriptic.

Hæmic.	8.	Hyperæmic.
	9.	Anæmic.
	10.	Septicæmic.
	11.	Uræmic.
	12.	Toxic.
Trophic.	13.	Hypertrophic.
	14.	Atrophic.
	15.	Cacotrophic or cachetic.

§ 63. **Conclusion.**—Upon the whole, consideration induces us to adopt the first of [45]these classifications. It is certainly of the utmost importance that a classification should be adopted for the purposes of medical jurists which is easily understood, and the ground of which is to be found in easily observed symptoms. Only in this way will the great gulf which separates medical men and lawyers be bridged over. When, however, mental peculiarities, as inferred from conduct, are taken as the basis of the methodical arrangement of kinds of insanity, or of patients laboring under them, into certain groups, little difficulty is likely to arise; as to a lawyer, insanity is to be inferred from certain acts, not from the existence of a certain cause. It must be remembered that all classifications are defective, and can only be defended on the ground of convenience and expediency, not upon that of absolute correctness or truth. In many cases much difficulty will be found in assigning some mental disorder to any one of the classes above enumerated, and care must always be taken to appreciate the fact that these words are not absolute partitions between diseases. In many cases these peculiarities which have served as a distinguishing feature of one class are found mixed with, or modified by those which have served as the distinguishing features of another. A classification is like a walking-stick, a thing to be of assistance. Yet some children ride on a walking-stick and some men make a hobby of classification. It is mental weakness which is the cause in each case.

CHAPTER IV.

AMENTIA.

§ 64. **Kinds of Amentia.**—[46] Amentia has been divided into two distinct kinds: Idiocy and Imbecility. The distinction between these two is far from being accurate. In many cases, the utmost difficulty arises in determining the precise degree of mental defect which amounts to idiocy; as, indeed, there is often much difficulty in determining what amount of simple weakness of intellect amounts to imbecility. Just as health and disease pass, the one into the other, by imperceptible gradations; just as there are innumerable degrees of mental power, so there are infinite shades in the mental darkness which constitutes amentia. Scientifically, it would be wrong to distinguish the greater degree of mental weakness from the less by two different names, which are almost sure to lead to a belief in difference of kind, but practically it is of importance. It is, however, of the utmost importance that the student of mind should remember that these classifications are really made with a view to convenience in thought, and that they are not strictly accurate, looked at in the light of observation.

§ 65. **Idiocy.**—Idiocy may be defined as a state in which, from defective structure of the brain, the individual has been utterly incapacitated from acquiring any such experience as would fit him in any way to fulfil the most trivial duties of his social position. And according to Bacon, "An idiot is a fool or a madman from his nativity, and one who never had any lucid intervals; and such an one is described as a person that cannot number twenty, tell the days of the week, does not know his father or mother, &c. But these are mentioned as instances only; for idiot or not, being a question of fact, must

be tried by a jury on inspection."[1] "Psychologically," says Dr. Bucknill,[2] "an idiot is a human being who from defect or disease of the brain, at a period of life before the mind has become developed, has suffered an arrest of mental development to such an extent that he is incapable of the ordinary functions and duties of his social existence. The time of attack may be before or after birth, sometimes so late as four or five years after, and thus the legal definition that idiocy is 'from nativity' is not strictly correct." Thus we see that an idiot is a person so thoroughly without mind that all mental cultivation has been and is out of the question. It is as difficult to make money without some capital either in money or the power to labor, as to acquire knowledge without a brain. To distinguish idiocy clearly from dementia, with which it is sometimes confounded, it must be remembered that the former is a congenital absence, or at least serious defect, of all the faculties of mind, while [47] dementia may be regarded as the gradual obliteration of faculties which have been possesed.

§ 66. **Causes of Idiocy.**—We have already spoken of the causes of mental disease and mental defect, and only a few words need be said here as to this important subject. In many cases, the parental excesses are the direct cause of the child's defect. Thus Dr. Howe observes: "By inspection of the tables, it will be seen that out of 359 idiots, the condition of whose progenitors was ascertained, 99 were the children of drunkards. But this does not tell the whole story by any means. By drunkard is meant a person who is a notorious and habitual sot. Many persons who are habitually intemperate do not get this name even now, much less would they have done so twenty-five or thirty years ago, and many of the parents of the persons named in the tables have been dead longer than that. A quarter of a century ago, a man might go to bed every night muddled and sleepy with the

[1] See also Lord Hatherly in Harrod *v.* Harrod, 1 Kay & J. 4; Co. Litt. 274 *a*, Fitzroy N. B., 233 *b*, ed. 1794; 1 Hale, P. C. 29; Lord Tenterden, C. J., in Ball *v.* Mannin, 1 Dow & Cl., 393, S. C. 3, Bli., N. S. 1; 4 Rep., 124; Lord Hardwicke, C., in Lord Donegal's Case, 2 Ves., Sr., 408; 1 Bl. Com. 304.

[2] Address on Idiocy, Journal of Mental Science, July, 1873, p. 170.

effects of alcohol, and still not be called an intemperate man. By pretty careful inquiry as to the number of idiots of the lowest class, whose parents were known to be temperate persons, it is found that not one quarter can be so considered."[1] Dr. Maudsley says: "I think, too, there is no reasonable question of the ill effects of marriages of consanguinity, that their tendency is to produce degeneracy of the race and idiocy is the extremest form of such degeneracy."[2] But while it is of importance to note the effect of foredone vice as a cause of disease, it is also incumbent upon us to note that prior to birth idiocy is not unfrequently produced by fright, care, anxiety, ill health, or accident to the mother, and that after birth injuries to the head, convulsions from teething, eruptive fevers, whooping-cough, defective nourishment, and other conditions of unhealth, will have the effect of producing idiocy.

§ 67. **Features of Idiocy.**—Idiots of the lowest type have simply a physical existence, and even that is modified by bodily infirmity, and often by anæsthesia, which would lead to death unless they were very closely watched. In a higher form of idiocy, or a mental condition more nearly approaching to ordinary intelligence, the patients have sensations of heat and cold, hunger and thirst. But it is somewhat difficult to form classes of idiots by reason of the attribute of intelligence possessed by them in a greater or less degree. They almost always agree in these things: they have misshapen heads, large gaping mouths, and their other features are not unfrequently ill-formed and distorted. As for expression! Expression is only thought become external to itself in the flesh, and therefore idiots' faces are marked by an utter want of all expression, and there is little or no power of speech. Some of them, however, utter cries in which ingenuity has found close resemblance to the sounds made by inferior animals. Their limbs and trunks are imperfectly developed, their complexion is generally sallow and unhealthy. Very often one

[1] Second Report of the Legislature of Massachusetts, by the Commissioners appointed to inquire into the condition of Idiots within the Commonwealth. By S. G. Howe. Boston: 1848.

[2] Body and Mind. London: 1870. P. 44. See a very interesting paper by Dr. Arthur Mitchel, (Commissioner in Lunacy, Scotland,) on Blood Relationship in Marriage considered in its influence upon the Offspring. Edinburgh Medical Journal, 1865.

or more of the senses is defective, sometimes one of them is entirely wanting. Only in the rarest cases is the head of full size and well formed. They usually die before the age of thirty.[1] In idiots it is usual to say that the power of will is entirely deficient; but we shall see more clearly, in considering the legal relations of idiots, what is meant by this phrase. They are sometime governed by impulses, and at the age of puberty manifest the sexual passion in ways as offensive as the ordinary normal indication of what Goethe calls "the presentment of sweet wants" is beautiful. They are exceedingly irritable, and subject to the most violent fits of passion, and have none of that exquisite sympathy which prevents them from injuring the feelings of another. Imitation influences them not a little, as it does monkeys. It is a power which is always strong in the weak.[2]

§ 68. **Cretinism: its Features.**—In Switzerland idiocy is often accompanied by one special kind of bodily deformity. The thyroid gland becomes enlarged, and this enlargement is known as goitre or bronchocele. But besides this deformity there are others. The stature is generally dwarfed; the belly protuberant; the legs small; the arch of the palate high and narrow; the mouth, from which the saliva is suffered to escape, large and [48]misshapen; the teeth irregular; the voice harsh and high pitched; the eyes squinting; the gait feeble and unsteady; the sexual power weak, or altogether absent. Persons afflicted by this disease are in Switzerland and Savoy called *cretins*, and in France *cagots*. It is ascribed to local peculiarities, and is said to prevail mostly in valleys lying among hills, although it has been argued that it only occurs where the people are living upon or drinking the waters which flow over a calcareous formation. The best opinion seems to be that this mental deficiency, coëxisting with this physical defect, is developed some time after the birth of the child. In some cases it is complicated by spinal distortion, in some by hydrocephalus. There is a division of cretins into three classes, but for all the purposes that such a work as this is

[1] Esquirol, "Maladies Mentales," vol. ii. p. 284.
[2] See Principles of Medical Psychology, by Feuchterslaben.

intended to subserve, enough has been said concerning this very curious variety of idiocy.

§ 69. **Imbecility** is, as we have already seen, only a less degree of idiocy. Yet it is well to remember, in relation to this form of mental defect, that it is actually the result of disease. It may be modified to a certain extent by education, but it is not a condition analogous to that which would result simply from an absence of all culture or education. One characteristic of a healthy mind is that it will educate itself. However small its opportunities of culture may be, it will secure the means of mental sustenance—of mental growth. But imbecility is not to be confounded with a mental weakness which results from the stunting due to lack of opportunities. It is a condition of actual disease which precludes the assimilation of facts, and consequently prevents education. This fact has been overlooked by many who have written about this disease. It is to be understood, then, that imbecility is an insanity in the same way that mania is, with very different symptoms it is true, but still due to actual disease.

§ 70. **Sir John Nicholl's Description of Imbecility.**—Sir John Nicholl has given an admirable description of the characteristic symptoms of imbecility, in the case of Ingram *v.* Wyatt,[1] which is worthy of attention. He says:

"When imbecility is original, or, as medical authorities say, conate, the memory is often perfect, especially of trifling and simple circumstances, though the other mental powers remain infantine, or, as the same authorities suppose and express it, 'the brain has more developed itself.' In such an individual the understanding has made little progress with years—it has not matured and ripened in the [65] usual manner; yet even in such individuals, unless the imbecility be extreme, some improvement will have taken place, some progress in knowledge beyond mere infancy will have been made, by the help of memory, imitation, and habit. Such an individual will acquire many ideas, will recollect facts and circumstances, and places, and hacknied quotations from

[1] 1 Haggard's Eccl. Rep. 384.

books; will conduct himself in an orderly manner; will make a few rational remarks on familiar and trite subjects; may retain self-dominion, and spend his own little income in providing for his wants as a boy spends his pocket money, and yet may labour under great infirmity of mind, and be very liable to fraud and imposition. The principal marked features of imbecility are the same which belong to childhood, of course varying in degree in different individuals—frivolous pursuits, fondness for and stress upon trifles, inertness of mind, paucity of ideas, shyness, timidity, submission to control, acquiescence under influence, and the like. Hence these infantine qualities have acquired for this species of deficiency of understanding the name of 'childishness.' The effect is, that where imbecility exists at all, and in proportion to its degree, it becomes necessary, especially in a case exposed to other adverse presumptions, to ascertain its extent with some accuracy; to see how far the individual was liable to be controlled by influence, to submit to ascendancy, to acquiesce from inertness and confidence in those acts upon the validity of which the court has to decide."

§ 71. **Imbecility distinguished from Idiocy.**—[56]Imbecility is unsoundness of mind occurring in early childhood. Idiocy, we have seen, is congenital. Many writers have endeavored to distingush idiots from imbeciles by other means. Georget regards the use of speech as a distinguishing characteristic of the imbecile, and the ordinary impression that the imbecile has more mind than the idiot seems to have been adopted by scientific observers as a good means of differentiating these classes. So much may a few months or years of sanity, when a child has just come into the world, do for the mind of the half-ripened man. Others have thought that they were founding a distinction upon another and better principle when they thought that imbeciles were to be regarded as different from idiots in that they had a capacity for instruction. But Georget's distinction is precisely similar, for the fact that an imbecile has speech indicates the past fact of the capacity for instruction. Many men amuse themselves by dressing propositions in different words, as children do by attiring dolls in different dresses.

§ 72. **Question of Distinction between Imbecility and Idiocy considered.**—But the truth is that no real distinction exists between the two, although for convenience they may be kept apart by means of the [51] two designations. The probability is that imbecility like idiocy is congenital, but that the defect not being so marked in the former as in the latter, being a defect less in degree although the same in kind, that it is not at once observed; and that it is only when the progress of the child in mental stature is seen to be slower than it is in the case of a simply stupid child, that the imbecility is suspected, and the date of its inception is fixed as that of the observation instead of that of the birth. This is as if we assert that the planet Uranus began to be on the 13th March, 1781, when Sir William Herschel observed it for the first time. Besides it is well to be aware that this distinction is entirely arbitrary, as in many cases it is impossible to distinguish a minor degree of idiocy from a major degree of imbecility.

§ 73. **Degree of Imbecility: How it may be Ascertained.**—Just as some people differ from others in the amount of their capacity, in their mental power, so do imbeciles, and so nearly do some imbeciles approach in intelligence the more stupid of the sane that it is sometimes almost impossible to say whether the individual should be classed with idiots or fools. The degree of defect is likely to be accurately indicated by the number of words they are capable of using. Indeed, we may judge of the power of ordinary sane men by simply numbering the words they habitually use. It must be habitual use and not such a use as might be prepared for by means of a cram with reference to this census. The fact that Shakespeare has used 15,000 words, that Milton has used 8000, and that many ordinary day laborers are incapable of using more than 300, throws some light upon this suggestion, and when we go lower in the scale we find it still better illustrated, for many imbeciles can only use one word.

§ 74. **Classes of Imbecility.**—One class of imbeciles, then, are incapable of acquiring or retaining knowledge: they are unable to understand or appreciate any of the laws of the

land, of the customs of society: they have not sufficient mental power to influence their feelings and emotions by means of reason, and they are incapable of appreciating any of the doctrines of a revealed religion. There seems little reason for applying the term imbecile to these. There is another class, however, in which, together with very considerable capacity for the acquisition of knowledge, and for the retention of memories, there seems to be an entire absence of that power which is used for the determination of the moral qualities of acts. It is very difficult to account for [52] the peculiar powers we find in some individuals. It is said that—

"Genius does what it must;
Talent does what it can."

But perhaps there is some reason for believing that everything "does what it must." That one man who is able to reason accurately about mathematical problems, one whose wits are nimble to discover an "undistributed middle" in any sieve of arguments, should yet be a stupid man in all the practical affairs of life, is a matter for some wonder. There is no reason why a man who has attained intense delicacy and skill in any mechanical operation should not retain the same qualities when his energy is applied to some analogous work. Why, for instance, a man who draws admirably should not write well. And yet so it is, and there is no reason to think that Nature has deviated from her ordinary procedure when she has given a man real intellectual capacity in regard to several sets of circumstances, and has still left him a fool with regard to other matters of relation quite as simple and comprehensible. There is no easily understood ground for idiosyncrasies. It would be difficult to explain why a man should in aphasia lose one or two words and those only. So it is difficult to explain how, together with considerable intellectual acuteness, there should exist great moral obliquity, or why, while there is really some appreciating of the moral law, there should be very great feebleness of the intellectual nature. But that these cases do occur, a very superficial observation will show, and it is upon such cases that the distinction between moral and intellectual imbecility has been founded.

§ 75. **Moral Imbecility.**—The assertion that there is such a disease as moral imbecility makes one or two remarks necessary in this place, for there are few questions of more importance in relation to medical jurisprudence than that as to whether it is necessary for the law to recognize an insanity which manifests itself simply by immorality. It is certain that just as there is general and partial insanity—insanity manifesting itself in relation to the whole scope of human conduct and action, and insanity manifesting itself only in connection with certain external relations of the individual—so we may distinguish between general imbecility or idiocy and partial idiocy or imbecility. In diseases which are symptomed by defect rather than by exaltation of power, it is more difficult to distinguish between the various forms of the aberration than it is when delusions exist in the mind, but still the often-remarked cunning, ingenuity, and cleverness, which are found compatible with a very marked degree of defect, shows that a similar differentiation of disease exists in relation to imbecility which may be observed in relation to mania. [53]Not unfrequently, imbeciles are capable of acquiring with much accuracy a large number of facts in one subject or department. Many have been noted for their powers of calculation, and we have ourselves seen an idiot who could spell almost any word backwards. So rapidly was this accomplished that it was found necessary to take down the letters as he uttered them. He spelt long and intricate words in this way with precision and accuracy. Now, the question to be determined is—Can this disease exist in connection with a man's moral conceptions, his ideas of rightness and wrongness, without, at the same time, affecting his other intellectual concepts? Some remarks of Mr. Bain, as to the moral sense, will help us to make clear our opinion as to this matter. "I have," he says, "given it as my deliberate opinion that authority or punishment is the commencement of that state of mind recognized under the various names of conscience, the moral sense, the sentiment of obligation. The major part of every community adopt certain rules of conduct necessary for the common preservation or ministering to the common well-being. They find it not merely their interest, but the very condition of their exist-

ence, to observe a number of maxims of individual restraint and of respect to one another's feelings on such points as person, property, and good name. Obedience must be spontaneous upon the part of a larger number, or of those whose influence preponderates in the society; as regards the rest, compulsion must be brought to bear. Every one not of himself disposed to follow the rules prescribed by the community, is subjected to some infliction of pain to supply the absence of other motives, the infliction increasing in severity until obedience is obtained. It is the familiarity with the *régime* of compulsion and of suffering, constantly increasing until resistance is overborne, that plants in the infant and youthful mind the germs of the sense of obligation. I know of no fact that would prove the existence of any such sentiment in the primitive cast of our mental constitution. An artificial system of controlling the actions is contrived, adapted to our volitional nature, the system of using pain to deter from particular sorts of conduct. A strong line of distinction is drawn in every human mind between actions that bring no pain except what arises out of themselves, as when we encounter a bitter taste or a scalding touch, and those actions which are accompanied with pains imposed by persons about us. These actions, and the circumstances attending them, make a deep and characteristic impression: we have a peculiar notion attaching to them and to the individual persons the authors of the attendant pains. A strong ideal avoidance, not unmixed perhaps with the perturbation of fear, is generated towards what is thus forbidden by penalties rising with transgression. The feeling drawn out towards those who administer the pain is also of the nature of dread: we term it usually the feeling of authority. From first to last, this is the essential and defining quality of the conscience, although mixed up with other ingredients. As duty is circumscribed by punishment, so the sense of obligation has no other universal property, except the ideal and the actual avoidance of conduct prohibited by penalties. This discipline indoctrinates the newly introduced member of society with the sentiment of the forbidden, which by and by takes root and expands into the sentiment of moral disapprobation. He thus joins with the other members of the

community in imposing and enforcing the prohibitions that have been stamped and branded in the course of his own education. Duty, then, may be said to have two prime supports in the more self-regarding parts of our nature—the sense of the common preservation and well-being operating upon a preponderating majority, and the sense of punishment brought to bear upon individuals (who must be the smaller number) not sufficiently prompted by the other sentiment. Order being once established in a society, that is to say, the practice of obedience being habitual to the mass of the community, it is only necessary to apply a disciplinary process to the young to prepare them for the same acquiescence in the public morality. The imposition of penalties begets at once the sense and avoidance of the forbidden and the awe of authority, and this, as a general rule, is retained through life as the basis of the individual conscience, the foremost motive to abstain from actions designated as wrong." It follows, then, if Professor Bain's account of the creation of the moral sentiments is correct—and although we might differ from him in one or two particulars, if this were a philosophical treatise instead of a practical work, we may take it as correct—that the moral sense is formed from or by means of the intellectual nature of men, as appreciative of pains in the past, as dreading their infliction in the future, and as dictating prudent abstention from such acts as are most likely to induce a renewed infliction of like penalties. To the creation of this sentiment, however, certain faculties contribute. To appreciate the pains, the individual must be sensitive, or in other words feeling; must have memory to remember past pains, and the occasions upon which they were suffered; must have judgment sufficient to understand the similarities of their present position to that in which they formerly were tempted, and forethought to see that the same penalty will follow a like dereliction of duty. A higher amount of intelligence would enable the individual to appreciate the real fact of duty from the infliction of punishment upon others, but if that is insufficient, the punishment must be personally instead of vicariously administered. But all these faculties are intellectual, and although past experience may produce that aroma of memory which we call sentiment, the sense of

moral obligation is unquestionably founded upon an intellectual basis. But it is to be remembered that no artificial system of control, however stringent, would induce an idea of duty or morality in one who was devoid of will. Indeed, this explanation of conscience takes for granted the fact of free volition. Apart from volition, all the punishment in the world would never create an active moral sense, although it might possibly produce a speculative notion of rightness and wrongness. Now, it seems to be a fact that the volition can be affected without at the same time any appreciable disease of the intellectual nature proper. We have seen that will is only to be regarded as active thought, or thought passing over into act, and it might almost seem that, that being so, the same notions which were in the head should appear in conduct. But the fact is that thought cannot pass over into act without the intervention of the body. Now the body is the seat of disease, and it is just in consequence of this disease that will becomes affected. We have seen a man who was under the influence of stimulants attempt to grasp something, say a bottle, and we have seen his misdirected clutch at empty air. Here we had the thought perfectly executed, but in passing over into act, disease intervened, and the volition went sprawling astray. So it is in moral matters: the thought in passing over into act goes astray just as the drunken man's hand did. And so we may speak of a man being intellectually sane while he is morally imbecile. But although such imbecility may exist, its occurrence in fact is very rare. In most cases of moral imbecility, the intellectual faculties are also seriously affected. In many cases, too, it must be remembered that the volitional power of a man, although it cannot be created, can be largely increased by punishment; and where a moral sense is supposed to exist, it seems a ground rather for the infliction of severer penalties, with the view of strengthening volition and emphasising the sense of obligation, than for exempting the individual from all punishment.

§ 76. **The Education of Imbeciles.**—These remarks lead us to the consideration of the question of the teachability of imbeciles. Many institutions exist throughout this country

in which the education of imbeciles is undertaken with a care and industry which might be worthy of a better cause. It is doubtless true that most imbeciles are susceptible to some influences, are amenable to some discipline, and can, to some extent, be improved. We have just had occasion to refer to the fact that in many cases a more severe penalty inflicted upon such persons would have the effect of putting some notion of duty into even an empty head; but, on the whole, we cannot say that, so far as our observations go, the result of these educational efforts has been altogether satisfactory. The educational improvement of which imbeciles are capable, and that is almost all the education which can be bestowed, does not improve, but tends only to make the imbecile more mischievous and troublesome. Their extra training seems only to teach them how more cunningly to perpetrate their vicious acts. It rather tends to make them more vicious. The reason of this is obvious. The education cannot be carried far enough to establish in the individual any good principles of morals. So, while the intellect has slightly improved, the moral nature is still undeveloped. Only one course of conduct could result from this. It is a question, therefore, whether much education, as it is ordinarily understood in institutions for idiots and imbeciles, should be resorted to. There has been a somewhat absurd social hunger for education. Those national appetites come in very various forms. In Australia there have been land hungers. People bought land without any reason for so doing. It was as absurd as the tulipomania. So it is we have been hungering for education [54] without considering whether it is good or bad. We have often been content if we could make men half clever, instead of attempting to make them even a little wise. We have devoted ourselves to the culivation of the intellect, while we have neglected all moral training. However that may be, and depend upon it, if it is so, we will have to suffer for it in the scourge (of scorpions) which our criminals and lunatics are to this country — still it is true that this extraordinary desire for the education of all has had its influence even upon our large idiot asylums; and possibly the munificence by which these are supported has been to some extent due to annual

exhibitions of the results of education upon imbeciles. Old people are amused by toys. If they see a monkey do what a man does they laugh. The feeling which appreciates satire in them is gratified. So it is with idiots' improvement: there is pleasure derived in this way which is tempered by a feeling of somewhat loathing sympathy with the poor children, which is not altogether disagreeable. In this way the question of improvability has been fairly tried, and in a large class with the result that has been above indicated. In that small class of imbeciles who are only intellectually weak, and who are capable of moral improvement, education might be had recourse to with advantage, but certainly without hope of rendering the individual a useful member of society.

§ 77. **The Limits of Effective Punishment of Imbeciles.**—As we have seen above, punishment may in certain cases have a beneficial result. Imbeciles can, if the imbecility under which they labor is not of the worst type, be broken of many of their degraded propensities by timely punishment, and a certain amount of moral understanding is undoubtedly instilled into them by such penalties when they are certain and immediate. But it is well to be cautious in drawing inferences from this fact as to the legal responsibilities of such classes of imbeciles. These punishments have this salutary effect, because they follow certainly and immediately upon the offence for which they are inflicted; but most of the penalties which the law can put in force against offenders are too remote in point of time to have any influence upon the actions or conduct of the imbecile. It requires some mental power to be able sufficiently to comprehend the relation between a crime and its punishment by law. Owing to this circumstance, less reliance ought to be placed on the fact that rewards and punishments are found to be efficacious in a household, or in an institution where imbeciles are assembled, at least when any inference would be drawn from it with reference to the responsibility of the imbecile for his or her criminal acts. The constant presence of a nurse or governess who has threatened the punishment is a very different, and more prominent and powerful motive to a weak mind than a statute-book threat made by something of which

it knows and sees nothing, except its representative to the common people, a policeman.

§ 78. **Mono-imbecility considered.**—We have said that there is a close analogy between the forms of partial mania and the forms of partial imbecility, which may be observed. Just as one faculty may be deranged, so may one faculty be defective and dwarfed. We have noted several instances of this. There are innumerable varieties in the relative development of faculties in the sane. One man has a memory for faces, and cannot remember names. One man has peculiar aptitude for observing forms, while another has the nicest discrimination of colors. And as we find these differences in in what we call health, so we might expect similar differences in relation to what we call disease. To these we have, as we think we were warranted in doing, applied the name of mono-imbecilities. In this connection, however, it is more important to note cases in which, instead of one faculty being defective, the majority of the mental powers are thus dwarfed and stunted. [55]In many cases, we find a singular power of reproducing musical sounds. We have ourselves seen an idiot girl who could not speak, but who could remember and repeat any music she had once heard. She sung some music-hall tunes in our presence. It seemed strange, but natural. Concerning the various degrees of capacity and education, very little requires to be said. Some imbeciles can read, write, and count, some can even, it is said, attain to one accomplishment. But they never do profit in the same way from their opportunities that their sane neighbors do. This is what was to be expected. We have heard it said that there was an indication of some injustice in the parable of the lord who left his servants money with which they were to trade during his absence. It will be remembered that the man who had received five talents made five, and the man who had two made two. The man who made two from two evidently did better than he who made five from five, and yet the man who had made the five got the one of him who buried his talent, besides his five. So it is with sane men and imbeciles. The powers of acquisition of the latter are limited by the very small amount of capital they start with, while

merely a proportionate progress upon the part of the sane man, to that made by the imbecile, would scarcely be any progress at all.

§ 79. **Characteristics of Imbecility.**—Many imbeciles know the value of money, and are capable of bearing testimony in certain cases, but are usually unable to carry on a connected conversation for any length of time. In most cases, they are incapable of any excellent emotion; and if they do become attached, are usually very fickle. They are restless and uneasy in their manners, and somewhat incapable, in most instances, of reasoning with reference to the future from the facts supplied by the experience of the past. The greatest number of imbeciles are found amongst the lower orders of society, just as more maniacs are found amongst the better educated. Imbecility is the disease of the dark ages, mania of those which are enlightened by civilization. There is the most marked difference observable in the wards of different lunatic asylums as to noise and excitement. In those which contain the patients which have been drawn from the great country districts of England, the lunatics are mostly stupid and stolid, while in those which contain patients from great centres of industry, there is usually much noise and excitement.

§ 80. **Imbecility and Vice.**—It is well known that the word "innocent" is in the old English an equivalent of imbecile. Thus, in "All's Well that ends Well," we find Parolles saying: "He was whipped for getting the Shrieve's fool with child, a dumb innocent who could not say him nay." But as Dr. Bucknill points out, these imbeciles, although innocent of producing their own defects—and that is what cannot be predicated of all insane persons, as we have already seen in considering the causes of insanity—they cannot be looked upon as innocent in the sense of not sinning, or of not developing most mischievous and evil propensities. We shall see that many crimes have been committed by imbeciles and idiots, and very many indeed become thoroughly [56] vicious. It is wonderful how little mind will do to be wicked with. Many of them are drunken, and most are lazy.

Temptations of the most trivial kind have with some of them an omnipotent influence; and motives which would not attract the attention of a sane man, not unfrequently govern their conduct. Any one who knows anything of the ordinary criminal courts of this country must know how many of those imbeciles are constantly being accused of crimes; of theft, assault, rape, arson, murder. And it must have struck any one whose attention has been called to the subject of mental unsoundness, how closely persons belonging to the ordinary criminal class approach to imbeciles in general appearance, in manners, in conduct, and in such manifestations of intelligence as they may have an opportunity of displaying. And yet this is surely no good ground for exempting the former from punishment, or for subjecting the latter to it, seeing that a reasonable and clear distinction can be drawn between these two classes, as we have seen in another part of this work.

§ 81. **Classifications of Imbecility.**—Hoffbauer[1] has made elaborate and almost useless distinctions between what he terms stupidity (dummheit) and imbecility (blödsinn), and goes still further, and divides the former into three different degrees, and the latter into five. There is some ingenuity displayed in his effort, but much ingenuity in this world is thrown away. Georget[2] has some interesting remarks upon this subject, which have been quoted by many recent writers. Dr. Howe, who is certainly an authority on this subject, has made the following classification: "Idiots of the lowest class are mere organisms—masses of flesh and bone in human shape—in which the brain and nervous system have no command over the system of voluntary muscles, and which consequently are without power of locomotion, without speech, without any manifestation of intellectual or affective faculties. Fools are a higher class of idiots, in whom the brain and nervous system are so far developed as to give partial command of the voluntary muscles; who have, consequently, considerable power of locomotion and animal action, partial development of the intellectual and affective faculties, but

[1] "Diepsychologie in ihren hauptanwendungen auf dio rechtspflege," §§ 26–46.
[2] "Discusion Médico-légale Sur la Folie," p. 146.

only the faintest glimmer of reason, and very imperfect speech. Simpletons are the highest class of idiots, in whom the harmony between the nervous and muscular systems is nearly perfect; who consequently have normal powers of locomotion and animal action, considerable activity of the perceptive and affective faculties, and reason enough for their simple individual guidance, but not enough for their social relations."[1] Here we see Dr. Howe classifies idiots and imbeciles into three orders, and the principle of his classification is volition and speech. We cannot doubt that if a satisfactory classification of those who labor under these defects is to be made, it must be founded upon both of these. But all these subdivisions are more or less fanciful, and can only be defended on the ground of practical convenience. We shall now proceed to consider in what light the State regards idiots and imbeciles, and who this disease affects: the relations of persons who are undoubtedly the victims of it in their relations to their fellow-men.

[1] Op. cit., p. 147.

CHAPTER V.

THE LEGAL RELATIONS OF AMENTIA.

§ 82. **Legal Relations of Idiots.**—We have seen that, with regard to the most marked forms of all mental disease, the difficulty of deciding in what way the capacity and responsibility of persons who labor under them is affected is very small. In relation to the kinds of disease which are only differentiated from condition of health by a scarcely perceptible tone or color of mental life, there is always exceeding difficulty in saying whether the mental disability is of such a nature as to entitle society to protection by the incarceration of the individual; or to entitle the individual to protection from those who might take advantage of his weakness or fury, or to protection from those penalties of the law which are designed to fall only on those who wilfully disobey its mandates. Thus it comes that the [48] legal relations of idiots need not occupy much attention. It almost follows, from what has been said, that an idiot labors under complete civil disability.[1] The conveyances of idiots are void.[2] An idiot cannot make a will.[3] An idiot cannot contract marriage.[4] Nor can an idiot be elected member of Parliament.[5] It is, however, true that an idiot cannot appear in an action at law by attorney, and even when an attorney is employed for him, the idiot should be described as appear-

[1] It is somewhat curious that in the United States of America, while idiots are deprived of almost all their civil rights, they are, by the Constitution of several of the States, left in the enjoyment of the right to vote at elections.

[2] But see Thompson *v.* Leach, Carth., 435.

[3] 1 Hale, P. C. 229; Bac. Abr. Idiot, *a*, 1; Beverley's Case, 4 Co. Rep., 124 *b*; Williams, Ex., 16; 4 Burns' Ecc. Law, 55; Ingram *v.* Wyatt, 1 Hagg. 384.

[4] Roll. Ab., 357; 15 Geo. II., *c.* 30; Browning *v.* Rean, 2 Phillim. 90. See also Scotch Law, Fraser i., 48 and 226, Johnston *v.* Brown, Nov. 15, 1823, and Ferg. Rep., p. 229, Sullivan *v.* Sullivan, 2 Hagg., p. 246.

[5] Com. Journ., 1625; Com. Dig. Parl. D. 9; Sheph. Elect., 109.

ing in person, or by guardian, according to the nature of the case.[1] An adult idiot can consent to carnal connection, and is not, as female children are, held incapable of giving consent.[2]

§ 83. **Irresponsibility of Idiots.**—We have seen that the same test of capacity is applicable to all kinds of disease, and that the same amount of capacity which will entitle a man to the enjoyment of civil privileges will also, in case of the commission of crime, subject him to punishment. If an idiot is deprived of the power of contract, of will-making, and the like, on the ground that he has no comprehension of the nature of these acts, that he cannot consent and cannot will, so he is to be held irresponsible for any crime he may perpetrate, on the ground that he did not know what he was doing, and did not know that he was doing what was morally wrong or forbidden by the law. The reason why idiots should not be held criminally responsible [49] for any act which they may commit is obvious. The law takes upon itself to punish crime because it is voluntary, intentional, and malicious. Whenever any act criminal in its nature is committed, the law presumes that the individual was acting wilfully, that the acts were done with some motive or intention, and that that motive or intention was malicious. Of course, any one of these presumptions is liable to be rebutted. By proof of duress, you rebut the presumption of the voluntary character of the act. By proof of fraud or imposition, the motive may be shown to be other than that which reading back, as it were, from the act in question would have been supposed. If, then, any of these presumptions be rebutted, the crime is disproved. It is quite evident that there is nothing in the character of the act itself which indicates its criminal nature. What in one case is called murder, and punished with death, is in another case called justifiable homicide, and rewarded by a money payment.

Now the proof of idiocy does, by a necessary inference, disprove the existence of will, as it is understood by us, and

[1] Co. Litt. 135 *b*, 2 Saund. 212 *n*; Oulds *v.* Sansom, 3 Taunt. 261. A lunatic may, however, appear by attorney, Beverley's Case, Humphreys *v.* Griffiths, 6 Mees. & W. 89.

[2] Reg. *v.* Ryan, 2 Cox, Cr. Ca. 115.

of malice, or intention, as it is defined by law. And these presumptions, which exist in ordinary cases, having been rebutted, the criminal character of any act done by an idiot is disproved. It would be absurd to punish a man for a thing he did not do, either with a view of deterring him from a repetition of the act of which he was supposed to be guilty or of deterring others from the commission of a like offence. We do not punish a stone because it hurts a man by falling upon him. The lead that forms the bullet which shoots a man is not culpable. We only blame in relation to sentiency. And as a man who does not know what he is doing at a particular moment, or if his will with regard to the doing or not doing that particular thing is in abeyance, is not sentient in relation to that particular circumstance, therefore it would be ridiculous to blame him for it, or to punish him for what, in point of fact, he did not commit.

§ 84. **The Principles of Exemption from Punishment.**— It seems a fair conclusion to come to in reference to all these cases that, where approval can be vouchsafed, there also can punishment be, under the opposite circumstances, awarded. In the case of an idiot, it would be as absurd to feel a moral approbation upon the ground of any act, as it would be in the case of a steam-engine to indulge in the same feeling upon the ground of any of its motions. Their acts have no moral character.

The principles that enable men to take cognizance of crime at all are found in the fact that a certain uniformity exists in the mental conditions of all men. This uniformity, with its subject variety, is called the normal condition. It is calculated that all men shun pain; that the pursuit of pleasure is universal. And if any very large section of mankind were not so constituted as to be thus operated upon by pleasure and pain, the law would utterly fail with regard to them. It is true that every man follows a different pleasure—every man dreads a different pain. Some dread everything from the great unknown future; others dread everthing from the little present. Still the law is founded upon this principle, and [50]its punishments are awarded upon this ground. But such a fact implies that those to whom an enactment ad-

dresses itself possess a certain amount of knowledge. If a man does not possess sufficient experience to conduct the ordinary affairs of life, if he does not comprehend the most simple and ordinary propositions, then it would be absurd to expect him to be influenced by considerations which require for their comprehension a somewhat considerable mental power. To an idiot who does not gain any experience from having once fallen in the fire—who does not understand words—acts of parliament are not in existence. And to many imbeciles who have the power of speech, who have some powers of acquisition, the proposition that if they do something just now they will suffer something in the time to come, is utterly incomprehensible. It is upon these principles that the law, which is a great lathe upon which human conduct is to be shaped, in accordance with certain principles, regards idiots as irresponsible for their criminal acts. And it is only in the application of these principles to the cases in which mental defect is not very marked—cases in which the individual manifests considerable intelligence, and at the same time great intellectual weakness, that any difficulty arises. "The only proper object of hatred or vengeance,," says Hume, "is a person or creature endowed with thought and consciousness, and when any criminal or injurious actions excite the passion, it is only in relation to the person, or in connection with him. Actions are by their very nature temporary and perishing, and where they proceed not from a cause in the character and disposition of the person who performed them, they can neither redound to his honour if good, nor infamy if evil. The actions themselves may be blameable—they may be contrary to all the rules of morality and religion, but the person is not answerable for them, and as they proceeded from nothing in him that is durable and constant, and have nothing of that nature behind them, it is impossible he can, upon their account, become the object of punishment or vengeance."[1] Now that is exactly the condition in which we find the idiot actually to be. He has no thought, no consciousness. It is not, in fact, he who did the deed. Shakespeare puts this admirably:

[1] Inquiry concerning the Human Understanding, § 8.

"Was 't Hamlet wronged Laertes? Never Hamlet
If Hamlet from himself be ta'en away,
And, when he 's not himself, does wrong Laertes.
Then Hamlet does it not: Hamlet denies it.
Who does it, then? His madness: if 't be so,
Hamlet is of the faction that is wronged.
His madness is poor Hamlet's enemy."[1]

So the idiot is purloined from himself, and he does it not. Upon these grounds, it is evident that the principle of irresponsibility, when the individual is wholly idiotic, is only rational. To all such cases, the test of irresponsibility, as laid down by the Judges, will apply; but in all cases of idiocy, as we understand the term, a verdict of irresponsibility will be pronounced.

§ 85. **Imbecility in relation to Crime.**—We had occasion to say incidentally in the preceding chapter that the term "innocent" as applied to imbeciles was really a misnomer. Our experience teaches us that it requires power to be good. The great man is to our thinking the only good man, and the many public people that you hear spoken about as amiable, as harmless, and as good, are after all good or harmless only in a narrow, negative sense, if good at all, but it is just of such stuff that the bad are made of, and these weak, amiable, stupid, good people, are, after all, only good for the nonce, because circumstances favor their remaining upright. So, too, it has been a frequent subject of remark that what little intelligence imbeciles possess more generally goes to foster, strengthen, and sharpen their evil propensities than to raise them to a level of moral sentiment and self-control. Hence, we see the necessity of considering the question of imbecility in relation to the criminal law. A few cases in which the evil propensities of persons of defective intellect have led to crimes will show the necessity still more strongly, and indicate the class of cases in which medical jurists may be called in and asked to perform medico-legal functions in connection with imbeciles. Imbecility and weakness may, as we have seen, exist in different degrees between the limits of absolute idiocy on the one hand and of perfect capacity on the other. In cases in which some [69] of the minor degrees of imbecility

[1] Hamlet, act v., scene 2.

exist, there arises much difficulty in the decision of the question as to whether the individuals are to be regarded as criminally responsible for their acts. This is necessarily so, for, as Sir John Nicholl has remarked, "Imbecility is a matter of degree, and the degree of weakness differs in the same individual under different circumstances, and according to the different habits existing and the different situations he is placed in at one time or another of his life."[1] As the weakness varies, so does the strength to resist temptation. And in many cases it would be utterly contrary to the real spirit of the law to punish imbeciles for their criminal acts. This is scarcely the proper place for considering the relation which criminal acts bear towards individuals who are mentally incapable, either by reason of mental weakness or by reason of actual delusion, of appreciating the real inducements to any given act. It is evident that the relations of a man to the State with regard to his criminal acts, and his responsibility or irresponsibility, must be very much the same whether the irresponsibility arises from an inability to appreciate motives, from absolute weakness of intellect, from the false motives of delusions, from the absolute incoherence of mania, or from dementia. It does not matter in what way the irresponsibility arises. All that the law can or ought to take cognizance of in such cases is the fact that the individual, from some cause or other, is unable to appreciate the real reasons which ought to make a man refrain from the commission of crime. It is true that there are always excellent reasons to a wise man for refraining from crime. The man who cannot appreciate these is not mad, he is only stupid, and stupidity is compatible with criminality, if it is not the very stuff that criminality is made of. But the stupidity must be due to unsoundness of mind, and it must be of such a nature and of such a degree as to render the individual utterly incapable of being influenced by the motives which the criminal law provides. If he was in such a condition that, at the time of the commission of the crime, and at the date when punishment would be inflicted, he would not be influenced by any certainty of punishment; if ordinary motives had no influence

[1] Portsmouth *v.* Portsmouth, 1 Hagg. Ecc. Rep., 355.

upon his conduct; if, instead of being influenced by a supposed hope of escaping detection, as the stupid man is; if, instead of only miscalculating probabilities, he has not calculated [70]probabilities at all; and if this want of the common forethought and prudence of mankind is due to mental disease, or that congenital defect which we have described, then it would be as absurd to punish such an individual as it would be to punish a stone because it cut a man's head open. In every sense, and for every reason, it would be the height of injustice and inexpediency to punish such an individual. But the question whether this inability to be influenced by ordinary motives arises from imbecility, or mania, or dementia, is one of fact. The law wishes to be assured of the fact of irresponsibility, and it is of very little importance in the result whether it arose from one or other of these diseases. It is from this circumstance that lawyers have made the absurd mistake of regarding it as of little or no consequence as to whether there was any real difference between these diseases, that they have come to regard all forms of mental disease as the same, and have set up one kind as a standard, and attempted to judge of all other cases of mental disease by referring them to this crude criterion. That it is of the utmost importance to distinguish clearly between each of these forms of insanity or mental unsoundness is as clear as that, when irresponsibility has been made out, it matters little to law by means of what series of circumstances, as constituting what has been called conduct, this irresponsibility has been proved. The only question which it is of importance to decide is that which refers to the exact degree of weakness which will amount to irresponsibility. A rule for the decision of this point has been given. Wherever, as we have said before, the individual is *hors de combat* with regard to actual choice—and this may arise either from utter inability to understand the nature of the question to be decided, from a driving delusion, *e. g.*, the command of God—or any other product of mental disease, he shall be regarded as irresponsible for any act committed while he was thus, as it were, inanimate with regard to it; for is not that mystery of choice or selection the very sign of life?

Of course it is not always easy to decide when this is the

case, but neither is it easy to say, in any case where fraud has been used to obtain a conveyance from some one who is in a confidential relation to the party using the deceit, or who, owing to youth or inexperience, has been the more easily imposed upon, whether the fraud is of such a nature as to void the deed. But the difficulty in any case does not prove the impracticability of the rule. And that such [71]must be the rule seems to us certain if disputes are to be avoided and scandal cases of medical testimony are not to arise.

§ 86. **Crimes committed by Imbeciles.**—"An idiot," says Dr. Hainsdroff, "in the Hospital at Salzburg, appearing to be singularly insusceptible of fear, an experiment of an appalling character, and of appalling consequences, was made upon him as a means of putting his susceptibility to the test. It was proposed to make the impression upon him that he saw a dead man come to life. A person accordingly laid himself out as a corpse enveloped in a shroud, and the idiot was ordered to watch over the dead body. The idiot, perceiving some motion in the corpse, desired it to lie still, but the pretended corpse raising itself in spite of this admonition, the idiot seized a hatchet, which unluckily was within reach, and cut off first one of the feet of the unfortunate counterfeit, and then, unmoved by his cries, cut off his head. He then calmly resumed his station by the real corpse."[1] This indicates the falseness of the theory which holds the harmlessness of these almost mindless creatures. In relation to such a crime, it may be said that the legal test, if applied, would establish the fact of irresponsibility. "A few years ago," says Dr. Guy, in the work from which we have already quoted, "a commission was granted in the case of a young gentleman aged 20, who was the slave of a childish fancy for windmills, with an aversion equally as strong to watermills. Having been placed under control in a place where there were no windmills, he cut the calves of a child's legs through to the bone, and stated that he should have taken away its life, that he might be tried for his act and removed from a place where there were no windmills. He had always been violent when

[1] Mayo on Medical Testimony in Lunacy, pp. 93 and 94.

thwarted in his fancy, had threatened his keeper and members of his family, and had more than once made preparations for committing murder. In this instance, childishness of fancy, insufficiency of motive, absurdity of act, and ignorance of legal consequences, were strikingly combined."[1] And in such a case it would seem to be wrong to hold the individual responsible for any act which was directly connected with his insane craving, if it could be shown that that craving was so strong as to be unrestrainable, even under the influence of the strongest motives.

It is much more difficult to see upon what principle the criminal Carr, whose case is given below, was exempted from punishment. In order that the true principles of the law may be understood in relation to what we cannot but regard as their violation, we give this case in full. Cuthbert Carr was tried at the Winter Assize at Durham, in the year 1866, for the murder of a female child, six years of age. When he was taken into custody, or rather gave himself up to the police, he made the following voluntary statement, after having been cautioned:

"On Friday, the 13th April, that is, just the time about half-past two in the afternoon, I saw the little girl coming up the road, the [72] same road as the father and mother came after. I took hold of her first and carried her away: she was over-frightened to cry—never spoke a word. I took her into the stables, and up yon ladder like into the loft, at the far end like. She then said, 'Mother! mother!' I just choked her then: before she was choked, I laid her down: then, you can understand. She was choked after that. I laid her underneath the hay to keep her warm. I can tell you the time when I think on: it was half-past six o'clock. I got one piece of string about a yard long. I split the twine in two: did not cut it, you know, I just split it with a pull. I tied the twine on her neck first: it had a loop on it. If I can mind right, she was dead long before that. I also tied her wrists together. That was at half-past six, you know. You know there is a door in yon stable: I opened it, and just looked out at the door, and I saw two women coming down: this

[1] Guy's Principles of Forensic Medicine, 2d edit., p. 164.

Catherine Foster for one, the other one lives beside the Felling Station. I locked the door then—there is a lock in it, you know—and came outside. Then I went into the house two or three minutes like, and I saw Catherine Foster going up the road again. I could not see any one else but her. Then I went up the road a bit myself, about thirty yards or so, to yon place, where the gatepost is. I went to look the distance where the gatepost had to be put in. It was a quarter to seven then. I stopped there about five minutes, then came back again—came down again. I saw Catherine Foster coming down a second time. They were just saying, they did not speak to me. I then went into the house for a bit. The stable door was locked at ten minutes to eight o'clock: my sister locked it with a key. About a quarter past eight, I went and opened it again. The key was on the chimney: it always lies there. I went up stairs into the loft after I had opened it, and went to the corner where she was lying in under the hay. I carried her outside on to the road. You know I was going to take her up the other way first: then there was some people came that way and passed us. I had her with me then. They went close past me, and I put her on the other side of the wall till they got passed—close as you are to me. She was lying about three feet from some of the people as they went past on the other side of the wall. I was not a bit frightened, you know. I then took her on to the road, and picked the hay off her hair. The hair was all wet with the water coming out of her mouth. The hay was all clagging [73] on to it. I just carried her away to yon place. I had to wait at it. There were some folk going down the road, one after the other. I just let her drop over the wall out of our field, at the corner on to the footpath against the wall. I was just going over myself to take her into the quarry. There was some one came down. They were very noisy, but they did not come that way. They went into the Split Crow Lane, by the back of our house. I then went into the house for about five minutes. I came out again to take her into the quarry. I went round by the Split Crow Lane. I met the father and mother about ten yards below the gate: they were scolding one another very hard. I walked past them both. I then went up Williamson's Road, to get

to the other place like. I heard them there scolding theirselves all the while. I waited a bit, maybe five minutes. They stopped there five minutes very quiet: when they were up the other road beside our meadow, I walked about twenty yards higher up the road. I was not as far up as where the bairn was lying. I had not got up to her then. The father and mother went up the road again. I thought they were going to come down that road, so I had to stop a bit. I waited until they got up the road a bit. They stopped talking when they got away. There was other two came down: they were speaking very low. They were walking sharp. I thought I could not get up to the bairn before they got down. I then went home the same road as I had come. I went into the house and went to bed: might be an hour after. I never had a knife. I tied her hands together just because the twine was there. It was our garden line. I burnt it when you were there, at a quarter past six next morning, when you were down that road. I got up at four to see what was doing. I saw Kemp, the policeman, there. There was two men there sitting on the wall, Bob Bell and Dennis. They had only half their clothes on. I knew the bairn was taken away. I saw the man and woman come down. I know they could not pass it. I burnt the garden line, for fear it might be seen. I think I have hardly anything else to say, but just I did not know who she was at the first. I know her other sisters, but I did not know her. There was a lot of blood came, and I burned the hay that it came on to. I choked her until she was insensible. Her heart was beating. She was breathing by gasps, and died about ten minutes after that. I never had a knife."

On the 28th of June, after having been duly cautioned, he further [74] said: "I got the bad disorder at Berry Edge, that was what set us on like. I was spoiled entirely. I thought the other way was the only way of getting clear. I imagined that at the time. I am better now. There is a difference between the old and the young, do you see?—you can understand it. I intended to kill her: that was the only way to keep it quiet. The bairn did not know me, but she knew the place like. That is all I have to say; but mind, I got better

with that. A Staffordshire man told me that, but I do not wish to name his name."

Only too many circumstances corroborate this horrible story in every particular. The story in itself was indicative of considerable shrewdness, and all his conduct while he was awaiting his trial was a proof of the possession of considerable intellectual power.[1] His personal appearance, however, was that of a typical imbecile, and some of his acts were so curious as to create a doubt as to his sanity.

Some of the answers he gave to the medical men who examined him indicate the reasons of the report which was drawn up. In answer to questions he said:

"I killed her because I thought if I didn't it might lead to bad consequences. I know what will out—'murder will out.' (He laughed.) If it hadn't come out for fourteen years they couldn't have touched me. Anybody that isn't found out is clear of murder in fourteen years. If you took that umbrella and didn't pay for it, it would be yours in six years. That is the law. If it had come out before that I might have been out of the country. I have killed animals: vermin must be killed. It would be wrong to kill human beings. I never fight: I am very patient. I learned arithmetic: I can count pretty fair. Nine times nine are eighty-one. I was always considered quick at figures. I made this confession because I thought it would be best to tell all about it and get it off my mind, you know, and stand the consequences. I'm not afraid."

With regard to the crime itself, in the same examination he said: "I carried her up into the loft: I had my arm under her body. She was too frightened to cry. This is correct. She was too frightened to cry, I tell you, and, besides, I stapped my [75]hand on her mouth. Yes, I carried her up a ladder with my right arm under her body, and my left hand on her mouth. Yes, I did it. It is possible, for I did it. I never carried a child before, but I have carried other things. She was pressed against my breast. She clung to me: I had no pity for her, at least not at the time. If she

[1] Before the commission of the crime, he had been engaged in compiling for his own amusement a dictionary of Anglo-Saxon words.

had cried out, I would not have spared her: I would have done it all the same. So I would if she had begged for mercy. She did not speak at all except when I was choking her. She cried, 'Mother! mother!' It did not touch my heart a bit. I was determined to get quit of the disease, because I couldn't bear it any longer. Doctors are no good. They do their best to protract disease, and when they can't protract it any longer, they kill their patients; besides, if I had gone to a doctor, it would have become known. They are dishonest, doctors. They poisoned the wells in the cholera time. It was to cure myself and keep it quiet I did this deed. It couldn't have come out in my case. I destroyed the proof—the hay and the twine. I wasn't afraid of being found out. I was suspected. I laughed when they told me I was suspected: of course, I denied it then. The lassie was one of the proofs, that was why I destroyed her. She would have told on me. She didn't know me, but she knew the place, or she might have kenned me again. I took her into the hayloft because there were men working in the quarry. I choked her to make her insensible, and keep her from crying. I felt no sorrow. She wasn't dead, but gasping, when I had connection with her. I had the ordinary pleasure that a man has when having connection with a woman. After that I choked her again: I did it to kill her. She was still gasping: I had no pity (smiling). She was ten minutes in dying. I sat by and watched her till she was dead. Then I happed her up with the hay: it was to keep her warm. I did that because I was going to take away the body afterwards and lay it down somewhere, and I thought it would mislead them as to the time it was done if it was warm."

Enough has been quoted to show upon what grounds the following report was given:

"I have to report that I have had two prolonged interviews with Cuthbert Rodham Carr, and I am of opinion—

"1st. That he labours under mental weakness or defect, which displays itself in stolid indifference as to his future destiny, callous-[76]ness of feeling, unreasonable obstinacy, and outbursts of violence upon real or imaginary occasions.

"2d. That this weakness or defect was probably congenital, and became more prominently developed as growth pro-

ceeded, and that it would be exaggerated by excitement, exhaustion, loss of sleep, intemperance, or great physical suffering.

"3d. That he is otherwise of fully average intelligence, apprehending everything that is said to him with clearness and precision, and replying with sense and aptitude.

"4th. That he expresses himself with accuracy and facility, and deports himself with patience and placidity when under examination.

"5th. That his powers of calculation and of memory are unusually acute, and that his acquirements are respectable for his position in life.

"6th. That he is perfectly capable of distinguishing between right and wrong, and, indeed, does this with nice discrimination.

"7th. That he is perfectly capable of foreseeing the consequences of any act which he may commit, and of regulating his conduct, under ordinary circumstances, with rational forethought.

"8th. That he believes in the great truths of religion, but is confused as to the doctrine of rewards and punishments.

"9th. That he labours under no delusions or hallucinations recognizable as such.

"10th. That he exhibits no signs of labouring, ordinarily, under overpowering passions or morbid propensities.

"11th. That his general appearance and manners are such as are usually associated with partial mental defect or eccentricity."

(Signed) "J. Crichton Browne."[1]

We cannot doubt that the accused was a person of unsound mind, but we cannot doubt that notwithstanding that unsoundness, he was a responsible being, and ought to have been punished for the crime he committed. We find it impossible to believe that he was found incapable of pleading upon any of the principles of the English law, and we cannot but regard the verdict as one of those indications of the pusillanimity of juries which are apt to disgrace that old and

[1] Newcastle Chronicle, 26 Dec., 1866.

excellent institution. The case of Henry Gibbetes, who was tried before Mr. Justice Lush at Leeds, almost at the same time that Cuthbert Carr was found incapable of pleading at Durham, and in which the test of responsibilty was laid down almost in the words of Chief Justice Tindal, was, it seems to us, decided in a more rational manner.[1] To us it seems impossible to distinguish between the case just quoted and that of the Alton murderer, who was, in the same year, tried for a like offence, sentenced to death, and executed. In many respects, the [77] crimes committed by these two men resembled each other. The Alton murderer, who was a clerk in a solicitor's office, upon seeing some children playing by a roadside one fine afternoon, persuaded one of them, a girl of eight or nine years of age, to go with him into an adjoining hop garden, and got rid of the other children by distributing some halfpence amongst them. Shortly after that time he was met returning to his office, where he made an entry in his diary to the following effect: "Killed a little girl: it was fine and hot." The child had meanwhile been missed, and her parents became alarmed, and a search was instituted. It was ascertained that she had been last seen on her way to the hop field, and in that field the dismembered fragments of her body were found scattered here and there. Some parts of the body could not be found at all. The vagina was missing. These are the main facts of this horrible crime, and it is almost impossible, it seems to us, to distinguish in any way between these two criminal acts, except in so far as there seems to have been a miscarriage of justice in the former, while, as the law at present stands, justice seems to have been done in the latter. With the question as to whether the Alton murderer should have been put to death, we have, in this place, nothing to do. But that he was not legally irresponsible for the crime he committed is to be inferred from all the principles which have been stated above.[2]

The case of McFayden,[3] which came before the High Court of Justiciary on the 28th and 29th December, 1860, is inter-

[1] Reg. *v.* Gibbetes, "Times," 18 December, 1866.

[2] The case of Pierre Joseph Delphine, which will be found in Georget's "Discusion Médico-légale Sur la Folie," pp. 130–144, may be consulted in this connection.

[3] 3 Irvine, 650.

esting and instructive in this connection. It appeared from the evidence that the prisoner—who had always been weak-minded; who was spoken of as "morally, mentally, and physically stunted;" who could only be taught to read with difficulty, and who even, after many pains, only read imperfectly; whose memory was defective, and who soon forgot anything he was told, and who had, nevertheless, a dread of punishment. and a certain knowledge of right and wrong—finding a child wandering alone, took it up in his arms, carried it to the river, and after undressing it, threw it in, and then pushed it down under the water by means of a stick; then ran away, bearing the clothes, and inviting several people, amongst others the mother of the child, to come and see the child drowning, assuring them at the same time that a whore had thrown the child into the river. This lad was found guilty, but recommended to mercy on the ground of his weakness of mind. We cannot but think that this was a most proper verdict. A verdict of guilty was found in the case of Deenney or Denny Scott, who was tried for murder in Glasgow sometime before McFayden, and the jury in this case also added to their verdict that "they recommended him to mercy on account of his general mental imbecility."[1]

§ 87. **The Principles of the Law as applied to Imbecility.**—It remains, then, to say one or two words as to the law which is to be applied in all such cases. The real test which is applicable in all cases where imbecility is set up as a defence is, Did the accused, at the time of committing the offence, know the nature and quality of the act he was committing, or if he knew what that act was, and what its immediate effect would be, did he or did he not know that it was wrong? This question presupposes that any defect which may be proved to exist is due to mental disease. The other tests, those which bear upon the question of delusion, need not be particularly alluded to in this place. Imbeciles do not, as a rule, labor under delusions. It is possible to find much weakness of mind in relation to false and diseased beliefs, and, as we shall see hereafter, these are the charac-

[1] 1 Irvine, 132. See also the case of E. Lees, 2 Broun, 484.

teristics of the mental aberrations which are associated with or which supervene upon some of the more severe forms of epilepsy. But in imbecility proper, delusions are rare. Shakespeare speaks of the idiot who "holds his bauble for a god;" but for the most part, this disease has not the quality of holding. We might call imbecility incontinence of thought. The brain, instead of being thought-tight, is leaking in innumerable places. It is incapable of the stable belief which is implied in the holding; and what seems to us a truer note is struck by the dramatic psychologist in his description of the "tale told by an idiot, signifying nothing." That being so, the only question we have here to answer is, Whether the test of knowledge of the nature and quality of the act, or the knowledge of right and wrong, is applicable to those cases of insanity which are manifested by mental defect? To us, it seems that there can be little question as to the satisfactory nature of that test in relation to imbecility. For the most part, this disease is symptomed by intellectual incapacity. This test, then, which gives the means practically of gauging the cognitive power of the individual, is perfectly applicable. The idiot's or imbecile's disease is characterized by want of knowledge—want of the capacity to acquire. If, then, this lack of capacity, and lack of acquisition, being due to disease, is of such a degree as to render the individual unconscious of the forbiddeness of the act he was doing, or if it deprived him of the appreciation of the real character of that act, it is evident that the individual is not really guilty, and should be acquitted. If, on the other hand, the degree of mental weakness is not so great as to deprive the individual of this knowledge; if he knew that it was wrong to steal, and yet did so on the ground of ordinary motives—for instance, the ease with which the theft could be effected, the fact that nobody would see him, the probability that the owner would think he had lost the article, or that some one other than himself would be suspected—then it seems well that he, having acted upon ordinary motives, should have the ordinary corrective applied to his disposition with the view of giving his character another bent or direction, and of convincing him that he had in the first instance miscalculated the probabilities. There can be no reason urged for the exemption of per-

sons of weak mind from punishment which does not apply with greater strength to the non-exercise of discipline in the young. Yet who would say that rewards and punishments are not to be used in the nursery? This test, then, seems to us thoroughly applicable to all cases of weakness of mind; and the cases which have been decided, although few of them have turned upon the question of imbecility, are yet in point, as showing the principles upon which the law invariably acts. Some of the most important are noted below.[1]

§ 88. **Definition of Idiocy for Court and not for Jury.**— A somewhat curious doctrine has been introduced to the notice of lawyers and the public in recent times by some New Hampshire Judges, who have maintained that the question of idiocy or sense, of insanity or sanity, is one of fact, and therefore ought to be left to the jury; that a judge who tells the jury what insanity is, is giving evidence without being sworn. Thus, in a case which came before the Court in 1870,[2] the jury were instructed that "whether there was such mental disease as dipsomania, and whether the killing of Brown (the deceased) was the product of such disease, were questions of fact for the jury." Again, Judge Doe, in another case, charged the jury that "if the defendant killed his wife in a manner which would be criminal and unlawful if the defendant were sane, the verdict would be not guilty, by reason of insanity; if the killing was the offspring or product of mental disease in the defendant, that neither delusion nor knowledge of right and wrong, nor design, nor cunning in planning and executing the killing and escaping or avoiding detection, nor ability to recognize acquaintances, or to labor or transact business or manage affairs, is, as matter of law, a test of men-

[1] Reg. *v.* Oxford, 9 Car. & P. 525; Macnaghten's Case, 10 Clark & F. 200; 8 Scott N. R. 595; Reg. *v.* Wright, R. & R. C. C. 456; Reg. *v.* Searle, 1 Moo. & R. 75; Reg. *v.* Stokes, 3 Car. & K. 185; Reg. *v.* Law, 2 Foster & F. 836; Reg. *v.* Vyse, 3 Foster & F. 247; Reg. *v.* Townley, 3 Foster & F. 839; Reg. *v.* Haynes, 1 Foster & F. 660; Reg. *v.* Barton, 3 Cox C. C. 275; Reg. *v.* Vaughan, 1 Cox C. C. 80; Reg. *v.* Davies, 1 Foster & F. 69; Lord Advocate *v.* Wylie, 2 Irvine, 218; Lord Advocate *v.* Smith & Campbell, 2 Irvine, 1; Lord Advocate *v.* Thomson, Shaw, 129; Lord Advocate *v.* McFayden, 3 Irvine, 650; Lord Advocate *v.* Gibson, 2 Broun, 332, at 358; Com. *v.* Rogers, 7 Mete. 500; Com. *v.* Mosler, 4 Penn. St. 267; Freeman *v.* People, 4 Denio, 79; U. S. *v.* Shultz, 6 McLean, 121; People *v.* Sprague, 2 Parker C. R. 43; McFarland's Trial, 8 Abb. Pr. N. S. 57, 89.

[2] State *v.* Pike, 49 N. H. 402.

tal disease; but all symptoms and all tests of mental disease are purely matters of fact to be determined by the jury. Whether the defendant had a mental disease, and whether the killing of his wife was the product of such disease, are questions of fact for the jury.[1] Insanity is a mental disease—a disease of the mind. An act produced by mental disease is not a crime. If the defendant had a mental disease which irresistibly impelled him to kill his wife; if the killing was the product of mental disease in him, he is not guilty. * * * If the defendant had an insane impulse to kill his wife, and could have sucessfully resisted it, he was responsible. Whether every insane impulse is always irresistible, is a question of fact. Whether in this case the defendant had an insane impulse to kill his wife, and whether he could resist it, are questions of fact. Whether an act may be produced by partial insanity, when no connection can be discovered between the act and the disease, is a question of fact. The defendant is to be acquitted on the ground of insanity, unless the jury are satisfied beyond a reasonable doubt that the killing was not produced by mental disease."[2] It is evident that this question applies to every kind of insanity, and not exclusively to cases in which imbecility is pleaded as a defence; but it may be more convenient to deal with it in this place, than to leave it for consideration at a later stage of our inquiry. It seems evident to us that this learned Judge has fallen into three grave errors. 1. He seems to regard the question which Courts have to determine as that of the sanity or insanity of the accused. 2. He seems to think that insanity is a word having a definite connotation, which is easily appreciable by a jury without assistance from a Judge. 3. He seems to think that the fact that a crime is produced by mental disease is an absolute defence. With reference to the first of these mistakes, we may say that it is the question of responsibility or irresponsibility which has to be decided by the Court with the assistance of the jury, and as the rule as to irresponsibility which is due to insanity

[1] Quoting thus far from the charge in State *v.* Pike, 49 N. H. 402.

[2] State *v.* Jones, 50 N. H. 373. See also Stevens *v.* The State, 31 Ind. 485; and see Bradley *v.* State, 31 Ind. 492. Dr. Maudsley, in his recent work, "Responsibility in Mental Disease," London, 1874, has recognized these decisions as a great advance upon the law of former times. But Mr. Francis Wharton, in his work on "Mental Unsoundness," § 109, *et seq.*, Philadelphia, 1873, has ably criticized these judgments, and exposed the huge fallacies upon which they are founded.

is a doctrine of law—that only a certain amount of insanity will constitute such irresponsibility—the jury must be instructed as to a test to discover whether that amount or not existed before they can find the fact of irresponsibility. Hence, insanity, in this sense—and it is only in this sense that the word is used—is a question for the Court. As to the second, we may say that the whole of the medical profession has been asserting for many years that it is impossible to draw a line between insanity and sanity, between mental health and mental disease. We are not prepared to doubt this assertion. But we agree with that profession that no line can be drawn: that as it has been said no man is at all times wise, it might be truly said no man is at all times sane. In each one of us there are seeds of disease; in each one of us these, like Jonah's gourd, grow up now and then and shadow our lives, and it is only because, like Jonah's gourd, they die down again anon, that we are not held to be insane by all our neighbors. It is impossible, then, for any one to say what acts are or are not the product or offspring of disease. But of all persons or bodies of persons who are unqualified to judge of mental disease, and of the acts that are likely to be the products of it, jurymen, or a jury, are the most so. True, it might be argued that it would be a jury after listening to medical testimony, but that to our thinking scarcely mends matters. We shall, in another place, see that what Macaulay said of statistics might almost be said of medical experts, viz., that they are mercenaries, and will fight on either side. We cannot but regard this direction of Judge Doe as most unfortunate and erroneous. With reference to his third error, we may remark that it is evident that it would be absurd to hold that proof that the criminal act was the product of disease was an absolute defence. The real question is not whether it sprang from disease, so much as whether it could or could not be inhibited.[1] If the want of inhibition was due to mental disease, then the individual may be held excused. But the mere ground that the act had its origin in disease is no good ground for exempting the person from the punitive consequences of his act, if he was in a position to resist that

[1] "If the impulse was resistible," says Mr. Fitzjames Stephen, p. 91, "the fact that it proceeded from disease is no excuse at all."

impulse, and did not. The jury must find that the individual was not in a position to choose or to refrain. It matters not whether the act was in the first instance the product of a healthy or diseased belief, if, through disease, the individual had no volition: in that case, he is not a fit object of punishment. But the jury must be told that they are to find whether he had this free volitional power or not, and that is what is in effect done when a Judge tells a jury that if they are convinced he did not know what he was doing, or if they believed that although he knew what he was doing he did not know that he was doing wrong, then they are to return a verdict of not guilty, on the ground of insanity. But this is leaving the facts to the jury, while the question of insanity is retained by the Court. We cannot think that with the whole mass of authority both in this country and in America against them—with the weight of the true principles of procedure and the true facts of observation and of science also opposed to them, that these erroneous decisions will be followed. We must believe that in future, as in time past, responsibility will remain a judicial question.

§ 89. **Contracts by Idiots and Imbeciles.**—The rule with reference to the contracts of idiots is really the same as that which is in force with reference to the contracts of any other persons who are deprived of mental capacity, and therefore of the power of giving a reasoning consent.[1] If the deficiency of intelligence is such as to render the party incapable of understanding and acting in the ordinary affairs of life, or in the particular contract, his idiocy will annul his contract.[2] It is unnecessary, nay, it would be confusing, to lay down any nice abstract rules as to the degrees of amentia, and to give any scientific test by which the contracting capacity of the party affected with imbecility might invariably be determined. It cannot be too often said that the determination of this question is for the practical common sense of ordinary men, and the rule which applies to it must be a strong practical rule which will do for everyday use, like the scales

[1] See Grotius De Jure Belli, B. 2, Ch. 11, § 5; and Inst. Lib. 3, tit. 20, § 8; Dig. Lib. 50, tit, 17, l. 5, l. 40.

[2] Ball *v.* Mannin, 3 Bligh, N. S. 1.

on a counter, and not a fine-drawn definition, like the fine balance which is kept under a glass case in the chemist's laboratory. The validity of a contract, then, will be determined by the fact of proof that the party contracting did or did not, at the time, understand what he was about.

§ 90. **Weakness of Mind in connection with Fraud.**— Although a contract will not be set aside on the ground that one of the parties was of weak mind, if that weakness did not amount to incapacity as above described, yet any imbecility will be material consideration in inferring fraud, when the contract is disadvantageous to the party laboring under this mental weakness.[1] If the contract is open to the imputation of fraud, it will be void, whatever be the character and comparative intelligence of the parties. A court of equity will vacate an agreement where an evident advantage has been taken of a weak-minded person, when it would refuse to set aside the same contract if made between persons of more equal understanding.[2] This relief is granted on the ground of fraud, rather than on that of the mental incompetence, which is to be regarded only as the reason why the fraud was successful.[3] If no such deception were used, even a court of equity would refuse relief, for it cannot undertake to "graduate intellectual differences on a nicely adjusted scale, nor to reduce sagacity and talent to the level of weakness and folly."[4]

§ 91. **The maxim as to Self-Stultification considered.**— It was a maxim of the common law, and was affirmed by Lord Coke, that "a man shall not be allowed to stultify himself;"[5] the meaning of which maxim was that a man was denied the privilege of pleading idiocy or lunacy. This privilege was, however, with some inconsistency, permitted to his privies in blood and in representation, who could, after his

[1] Doane *v.* Kirkwell, 8 Car. & P. 679.

[2] Gartside *v.* Isherwood, 1 Bro. Ch. 560; McDearmid *v.* McDearmid, 3 Bligh, N. S. 374; Dent *v.* Bennet, 7 Sim. 589; Dunnage *v.* White, 1 Wils. C. C. R. 67; 1 Story's Equity Jur. § 238.

[3] McAdam *v.* Walker, 1 Dow, 177; Grant *v.* Thompson, 4 Com. 208.

[4] See 1 Story Eq. Jur, § 224, *et seq.;* Lewis *v.* Pead, 1 Ves. Jr. 19; Farman *v.* Brooks, 9 Pick. 212.

[5] 4 Co. 123; Co. Litt. 147. But see Fitzherbert *v.* Natura Brerum, 202 *n.*

death, avoid his contract, on the ground that he was *non compos mentis*.[1] This maxim has seemed to very many writers to be ridiculous and absurd,[2] but it may be enough to quote the words of Mr. Justice Story, who says: "How so absurd and mischievous a maxim could have found its way into any system of jurisprudence professing to act upon civilized beings, is a matter of wonder and humiliation."[3] But the stringency of this rule has been much relaxed in England, and while its evil effects remain in the fact that although idiocy or lunacy alone cannot be pleaded as a perfect defence to a simple contract, the more rational principle admits it as most powerful evidence to establish the fact of imposition.[4] The rule, then, is, that the contract of an idiot stands upon the same footing as that of a sane person, but acts and facts will afford indications of fraud in relation to the former, when they would not with regard to the latter.[5] Yet lunacy is, as we will see hereafter, a good defence to an action on a specialty made when the party was insane.[6] We find a strong analogy between the law as applicable to the responsibility of infants and that which is applicable to the responsibility of idiots upon their contracts. Neither is ordinarily liable upon specialities, and both are liable for necessaries supplied *bona fide*.[7]

§ 92. **Inquisition and its effect upon the Power to Enter into Contracts.**—In England, it has been held that an inquisition of lunacy does not necessarily make all the contracts entered into by the idiot or lunatic during its continuance void or voidable. In the words of Lord Ellenborough, "an inquisition of lunacy was by no means conclusive on

[1] Co. Litt. 247 *a*, *b*; Beverley's Case, 4 Co. Rep. 123; 2 Bl. Com. 291.

[2] Fonbl. Eq. B. 1, Ch. 2, § 1, 46. See also Yates *v.* Boen, 2 Str. 1104: Buller's N. P. 172; per Lord Holt in Thompson *v.* Leach, 3 Mod. R. 301.

[3] Pothier on Oblig. Evan's note, App. No. 3, p. 28.

[4] Brown *v.* Jodrell, 3 Car. & P. 30; per Ld. Tenterden, Sentance *v.* Poole 3 Car. & P. 1; Levy *v.* Baker Moo. & M. 106 *n*; Manby *v.* Scott, 1 Sid. 112. In America, the maxim has been entirely discarded. Mitchell *v.* Kingman, 5 Pick. 431; Seaver *v.* Phelps, 11 Pick. 304; Grant *v.* Thompson, 4 Conn. 202; Lang *v.* Whidden, 2 N. H. 435; Somes *v.* Skinner, 16 Mass. 348.

[5] Dane *v.* Kirkwall, 8 Car. & P. 679.

[6] Baxter *v.* Portsmouth (Earl), 2 Barn. & C. 170; Chitty on Contr. 136.

[7] Baxter *v.* Portsmouth (Earl), 2 C. & P. 178; Tarbuck *v.* Bispham, 2 Mess. & W. 6; Fisher *v.* Jewett, Bert. 35. See Contracts of Lunatics, § *post*.

the trial of that issue [sanity or idiocy], but was admissible as evidence."[1] In the United States, the rule is somewhat different. It is provided, in some of the States at least, by statute, that, upon representation or request, idiots, lunatics, drunkards, and other persons of unsound mind, may be put under guardianship; and when that is done, the finding of lunacy by a competent court is conclusive evidence of unsoundness of mind, so as to render all contracts subsequently entered into by the idiot or lunatic void,[2] unless in cases of absolute necessaries supplied to the lunatic under special circumstances.[3]

§ 93. **The Contract of Marriage in relation to Imbecility.**—That the same principles are applicable in relation to the contract of marriage, it is scarcely necessary to state, but we may refer to one or two cases, which will be useful not only in illustrating these principles, but as giving some indication of the evidence that will be required and received in such cases.

[59]Miss Bagster was proved by the evidence to be a frivolous and weak-minded girl whose education had been much neglected. She was a lady of fortune, and she ran away with and was married to a Mr. Newton. An application was made by her family to dissolve the marriage on the ground that she was of unsound mind. Amongst other facts urged before the commission as proof of the allegation, there were mentioned that she was occasionally violent and self-willed, that she had been passionate as a child, and that even in maturer years she had little or no self-control. That she was ignorant of arithmetic, and therefore incapable of taking care of her property. That she had some erotic tendencies, which were evinced by her want of womanly delicacy, and by her having engaged herself with a view to marriage to several individuals. On her examination before the commissioners, her answers were intelligent, and her conduct in no way dif-

[1] Faulder *v.* Silk, 3 Camp. 126. See also Scrgison *v.* Sealey, 2 Atk. 412; Tarbuck *v.* Bispham, 2 Mees. & W. 2; Ball *v.* Mannin, 3 Bligh N. S. 1.

[2] Leonard *v.* Leonard, 14 Pick. 280; McDonald *v.* Morton, 1 Mass. 543; White *v.* Palmer, 4 Mass. 147. See also Fitzhugh *v.* Wilcox, 12 Barb. 235; Wadsworth *v.* Sherman, 14 Barb. 169.

[3] McCrillis *v.* Bartlett, 8 N. H. 469.

ferent from that of ordinary individuals. Seven medical witnesses were summoned to support the commission, and each of them deposed that she was of unsound mind. The commissioners, however, had recourse to Drs. Morrison and Haslam, who visited her, and who came to the conclusion that she was neither imbecile nor idiotic, and that her inability to manage her affairs arose from ignorance. She was aware of her deficiencies, and deplored her ignorance of arithmetic, and explained it on the ground that her grandfather had been too ready to send excuses for idleness when she was at school. Her conversation generally impressed Drs. Haslam and Morrison with a belief in her sanity. The jury, by a majority of twenty to two, returned a verdict that [60]Miss Bagster had been of unsound mind since November, 1830, and the marriage was consequently dissolved.[1]

The case of the Countess of Portsmouth *v.* the Earl of Portsmouth,[2] which was a suit for the dissolution of marriage on the ground that the earl was of weak and afterwards of unsound mind, is instructive. It was decided in this case that a marriage *de facto* solemnized under circumstances of clandestinity, inferring fraud and circumvention between a person of weak mind and the daughter of a trustee or solicitor, (who had great influence over him, and by whom he was clearly considered and treated as of unsound mind,) was null and void.

Many persons testified to their belief that Lord Portsmouth was of "sound mind, and capable of conducting the ordinary transactions of life;" but they admitted that his lordship was a "weak man." At school he was deficient, and not like other boys; he was cowardly, yet he was not incapable of instruction, and had an excellent memory. He acquired some languages, and displayed considerable proficiency in arithmetic. He certainly was not regarded as an idiot. When he came of age he joined his father in suffering a recovery and in making a new settlement of the family estates. In 1799 he married Miss Grace Norton, and by a settlement

[1] See London Medical Gazette, vol. x., pp. 519-553; London Atlas Newspaper, July 8 and 15, 1832.

[2] 1 Haggard's Eccl. Rep. 355.

then made, his property was placed in the hands of trustees. In 1802 he was deemed capable of giving evidence in a court of justice, but it was a matter of surprise, and some conversation, that he made so creditable an appearance upon that occasion, which proves that public opinion had inclined to the belief that he was of weak mind. It was proved that he was able to conduct himself with much propriety under restraint and checks, such as are imposed by the presence of other individuals; and that he had personal feeling of shame or self-respect which even very weak-minded persons are not entirely without. Further, it was proved that his servants were his playfellows in town and country; that he played all sorts of tricks with them; that he was fond of driving a team with which he carted dung, timber, and hay; that he was cruel to the horses; that he was fond of bell-ringing with a view to earning the paltry remuneration; that he took delight in slaughtering cattle. He had delusions respecting lancets, and tapes, and basins in women's [61] pockets. He was proved, even when he had attained the age of forty, to have flogged an old bailiff who was twenty years older than himself. One feature in his character which was dwelt upon was his timidity and his liability to be controlled. It is a symptom of all weak minds. Only the great man is brave: the weak are always cruel and cowardly. It was owing to this circumstance that Mr. Hanson, his trustee and confidential solicitor to the family, acquired ascendancy over him. The earl married one of Mr. Hanson's daughters.

Sir John Nicholl, in giving a very able judgment, observed: "The law in the case admits of no controversy, and none has been attempted to be raised upon it. When a fact of marriage has been regularly solemnized, the presumption is in its favor; but then it must be solemized between parties competent to contract, capable of entering into that most important engagement, the very essence of which is consent; and without soundness of mind there can be no legal consent—none binding in law: insanity vitiates all acts. That considerable weakness of mind circumvented by proportionate fraud will vitiate the fact of marriage, whether the fraud is practiced on his ward by a party who stands in the relation of guardian,

as in the case of Harford *v.* Morris,[1] which was decided principally upon the ground of fraud; or whether it is effected by a trustee procuring the solemnization of the marriage of his own daughter with a person of very weak mind, over whom he has acquired a great ascendancy. A person incapable from weakness of detecting the fraud, and of resisting the ascendancy practiced in obtaining his consent to the contract can hardly be considered as binding himself in point of law by such an act. At all events, the circumstances preceding and attending the marriage itself may materially tend to show the contracting party was of sound mind, and was so considered and treated by the parties engaged in fraudulently effecting the marriage. In respect of Lord Portsmouth's unsoundness of mind, the case set up is of a mixed nature, not absolute idiocy, but weakness of understanding; not continued insanity, but delusions and irrationality on particular subjects. Absolute idiocy or constant insanity would have carried with them their own security and protection; for in either case the forms preceding and the ceremony itself would not have been gone through without exposure and detection. But here a mixture of both, by no means uncommon, is [62]set up—considerable natural weakness, growing, at length, from being left to itself and uncontrolled, into practices so irrational and unnatural as in some instances to be bordering upon idiocy, and in others to be attended by actual delusion—a perversion of mind, a deranged imagination, a fancy and belief in the existence of things which no rational being, no person possessed of the powers of reason and judgment, could possibly believe to exist."

And in concluding his remarks, he said: "A marriage so had, wants the essential ingredient to render the contract valid—the consent of a free and rational agent. The marriage itself and the circumstances immediately connected with it do not tend to establish restored sanity: it was neither a 'rational act,' nor was it 'rationally done:' the whole 'sounds to folly,' and negatives sanity of mind. The Hansons, in the mode of planning and conducting the transaction, show that they treated and considered Lord Portsmouth

[1] 1 Haggard's Consistory Reports, 61.

as a person of unsound mind, and Lord Portsmouth, in submitting, acquiescing, and not resisting, confirms his own incompetency. Even if no actual unsoundness of mind, strictly so called—if no insane derangement had existed—if only weakness of mind, and all admit he was weak, yet, considering the passiveness and timidity of his character, on the one hand, the influence and relation of Hanson as his trustee, on the other, and the clandestinity and other marks of fraud which accompanied the whole transaction, I am by no means prepared to say that without actual derangement in the strict sense the marriage would not be invalid; but in my judgment Lord Portsmouth was of unsound mind, as well as circumvented by fraud."

§ 94. **The Capacity of Imbeciles to make Wills.**—We have seen that there is a contest of authority as to whether it requires more mind to enter into a contract or to make a will, and we need not reopen the question in this place; but it is well to remember, and therefore cannot be too often impressed, that it does not require colossal intellect, or perfect health, or a well-regulated mind, or anything like moral perfection, to entitle a person to dispose of his property by an instrument which is to have effect after his death. The law in relation to this matter has been well stated by Cockburn, C. J., where he says: "It may be here not unimportant to advert to the law relating to unsoundness of mind arising from another cause, namely, from want of intelligence occasioned by defective organization, or by supervening physical infirmity, or the decay of advancing age, as distinguished from mental derangement—such defect of intelligence being equally a cause of incapacity. In those cases, it is admitted that though mental power may be reduced below the ordinary standard, yet if there be sufficient intelligence to understand and appreciate the testamentary act in its different bearings, the power to make a will remains."[1] Here, then, we have a definite rule applicable to all cases where weakness of mind might seem to indicate a loss of testamentary capacity. Did the testator know what he was doing; did he appreciate what

[1] Banks v. Goodfellow, 5 L. R., Q. B. 546, at 567.

were the objects about to be effected by the instrument in execution; did he know his relations to those who were of his own blood, or to those who had been on terms of intimacy or friendship with him; could he rationally make up his mind to a course of conduct—then he could make a will. It matters not that the person has been regarded as an imbecile by many of those who were brought into contact with him; that he was actually of weak mind, infirm of purpose, and ruled by prejudice. If he understood what he was doing, and meant to do it, then he was by law entitled to do it.[1] In the case of Banatyne *v.* Banatyne,[2] in which the validity of a will was contested, Dr. Lushington said: "I must bear in mind what the nature of the case set up in opposition to the will is. I must repeat that it is not lunacy—it is not monomania—it is not any species of mental disorder, the symptoms of which it may, at periods, be difficult to detect; but the case presented is that of idiocy or imbecility, the characteristic of which is permanence, with little or no variation, though often, in case of idiots, it does happen that there will be a greater degree of excitement demonstrated than at other periods. How is such a case to be met? I apprehend that to meet it, and to show that such a state of things did not exist at any given period, proof of acts of business are most important evidence. Many acts of evidence could possibly be done by a lunatic and the lunacy not detected; but it is scarcely possible to predicate the same of an idiot or lunatic, or imbecile person. I shall look, therefore, in the first instance, to the acts of business. It is proved by Mr. Falkner that the deceased kept an account with Messrs. Tuckner, at Bath, for four years, from 1818 to 1821, and during all that period occasionally drew drafts, and all these drafts were paid to himself over the counter. According to the evidence, the deceased came himself to the counter, and there is no

[1] Boughton *v.* Knight, 42 L. J., P. & D. 25; Blanchard *v.* Nestle, 3 Denio, 37; McMaster *v.* Blair, 27 Penn. St. 298; Andress *v.* Weller, 2 Green Ch. 604; Butlin *v.* Barry, 1 Curteis, 614; Horne *v.* Horne, 9 Iredel, 99; Converse *v.* Converse, 21 Vt. 168; Potts *v.* House, 6 Ga. 324; Stubbs *v.* Houston, 33 Ala. 555; Watson *v.* Donnelly, 28 Barb. 653; Parish *v.* Parish, 42 Barb. 274; Daniel *v.* Daniel, 39 Penn. St. 191; Thompson *v.* Kyner, 65 Penn. St. 368; Roe *v.* Taylor, 45 Ill. 485; Lilly *v.* Waggoner. 27 Ill. 395.

[2] 16 Jur. 864.

proof of any one accompaning him on such occasions. He asked for the sum he wanted: the clerk filled it in, he signed it, and took the money. Surely no idiot could have done this, for he must have exercised thought at the bank, memory and judgment as to thing required; and moreover his conduct and demeanor could not at such times have been as described by the witnesses against the will, or, from the glaring colors in which his imbecility is depicted, it must have been discovered, and the business never could have been transacted at all. * * * I consider these transactions of first-rate importance towards solving all the difficulties of this case; for here, after the lapse of about thirty years, the Court has the advantage of facts proved, with the dates duly affixed to them. There is, I must say, not the least evidence to show that in any one of these acts of business the deceased was assisted by any person whatever. The presumption is the other way, and to put these facts upon the very lowest basis on which they can be placed, they do utterly disprove idiocy or imbecility. I will simply repeat what I have already indeed said, that those who are afflicted with lunacy sometimes have the management of, and can manage, their pecuniary affairs—an idiot never." We have quoted from Dr. Lushington's judgment with a view of showing the practical test which must be applied in all these cases, and also by way of indicating the kind of evidence which will weigh most in such cases. The question of the testamentary capacity of such persons is not likely to arise often, as the disease is generally characterized by a want of all business capacity.[1]

§ 95. **Commissions of Lunacy in relation to Amentia.**—Perhaps the subject which it is of most importance clearly to understand in relation to imbecility is that which refers to the protection which the State extends to those who are ununable to manage their own affairs. Not unfrequently persons of very weak mind become possessed of very large fortunes, and are quite incapable of performing the difficult work of judiciously expending their means or of managing their estates. But these results follow as often from reckless

[1] See Ingram *v.* Wyatt, 1 Hagg. 384, and 3 Hagg. 466-369.

folly and foolish vice as from actual disease. Under both these sets of circumstances, it is for the interest of friends that the possessor of the property should be deprived of the power of squandering his estates, or of making what is by common metaphor called ducks and drakes with his money. But only where the incapacity is due to actual mental disease will the law allow of this deprivation,[1] and it is only in such a case that the Court of Chancery will appoint a committee of the person and of the estates. Unsoundness of mind must in all such cases be established to justify an inquisition. It would seem that that amount of weakness which will lay the individual open to undue influence, if any with base intentions should approach him, and which might be a reason for setting aside an instrument so extorted, will not of itself be sufficient to warrant an inquisition.[2] In order to justify a verdict on a commission, the jury must be convinced that the individual is incapable of governing himself and his affairs by reason of unsoundness of mind. It is not enough to prove weakness of character, liability to impulse, or susceptibility to influence, good or bad; neither mere imprudence, extravagance, recklessness, eccentricity, or immorality, nor all these combined, will suffice, unless they can come to the conclusion that these are due to mental disease. Some cases will illustrate these principles.

[57] Dr. Guy speaks[3] of a case in which he was called to give evidence. "In this case the patient did not know how many pence there were in sixpence or a shilling, or how many shillings in a sovereign; could not perform the most ordinary operations of arithmetic; was ignorant of the date, the month, and the year; did not know the name of the reigning monarch; could not recognize persons whom he had seen and conversed with only four days previously. His attention was aroused with the utmost difficulty, and could not be fixed to any one subject. His look was vacant, his dress peculiar, his gait

[1] Per Lord Eldon, 19 Ves. 586.

[2] Per Master Warren, in Windham *v.* Windham, ante p. 192 See Collins *in re*, 3 Green Ch. (N. J.) 253.

[3] Principles of Forensic Medicine, 2d edit., p. 165.

awkward, his motions grotesque, his speech slow and hesitating. He used the same words and expressions again and again, repeated imperfectly the tasks and prayers of his childhood, and imitated the contortions of persons like himself, subject to fits. Such a case could present no difficulty either to medical witnesses or to the jury."

This, however, can be said in very few cases, and the difference of the opinion of medical witnesses, and the incompetency of a jury to grapple with such cases have become familiar facts.

"Mr. Edward Davis was born in low circumstances, and obtained an extremely imperfect education. He was noticed at school as being very shy of his companions, but was not considered stupid. He commenced business as a tea-dealer, and by indefatigable industry and attention to his business acquired property, but his early habits continued, and he was so habitually anxious and nervous that the night before the great tea sales at the India House he could not sleep. He was subject to dyspepsia, and even inclined to hypochondriasis. Finding himself, also, deficient in education, he endeavored to acquire information by reading what he took to be the best authors, as is natural with such persons. Was very vain of showing off his late acquisitions, particularly in the way of spouting. It appears that his mother, even at his advanced period of life[58] (twenty-seven) exercised a complete sway over him. She would not allow him to carry any money in his pocket, nor to spend the most trifling sum without her advice and permission. He dared not go to the play or leave the house for a few hours without asking her consent, and indeed she turned him out of his shop if he displeased her. Foreseeing that if he married she would be displaced from the management of his house and concerns, she prevented him from seeing young females. He made many attempts to emancipate himself from this control by offering her large sums of money if she would leave him, but they were all rejected. His health became more and more affected, and Mr. Lawrence, to whom he applied for advice, found his look wild and manner hurried. He used much gesticulation, and ex-

pressed a strong antipathy to his mother, and several relations who he supposed were combining against him. Mr. Lawrence considered him of unsound mind, but that the antipathy to the mother was the chief delusion. The disease would be removed if he could be reconciled to her.

"About this time his mother placed him under the care of Dr. Burrows, against whom it appears he entertained a strong aversion. He now consulted Dr. Latham on the subject of his supposed insanity. In the conversation with that physician he used much gesticulation and theatrical gestures; was apprehensive that any one should hear the narrative; spoke of his wealth, and occasionally quoted Byron and Shakespeare. He repeatedly insisted on Dr. Latham's opinion whether he was insane, and threatened vengeance if he did so think. Dr. Latham was inclined from this interview to doubt his sanity.

"Mr. Davis shortly after left his house and lodged at an inn, where his appearance was wild, and he awoke the servant in the night with the idea that there were thieves in the house. He was, however, soon reassured, and went to sleep.

"He was soon after confined in a private madhouse, and this confinement led to an application for his release. Several physicians examined him (Sir George Tuthill, Dr. Monro, Dr. Macmichael, and Dr. Sutherland), and the majority being of opinion that he was of unsound mind, the Chancellor granted a commission.

"The testimony adduced was principally what has been already stated. The state of his affections was much dwelt on as a proof; so, also, his having purchased some property at an extravagant rate. [59] He expressed much indignation at his confinement, but was calm and correct in his conversation. It turned out on the trial before the commission that at the very time when he was about being confined he gave direction as to his business, and was indeed consulted by the very persons engaged in the application relative to the conduct of that business. The result of the commission was that Mr. Davis was restored to his liberty and property."

[1] This case is taken from Beck's "Medical Jurisprudence," 7th edit., p. 457, Dr. Beck having taken it from the "Quarterly Review," vol. 42, p. 345.

[65]The general principle that proof of imbecility is only to be satisfactorily obtained, in many cases, from the careful investigation of the whole character and conduct of an individual, frequently extending over a long course of years, has already been illustrated, but the celebrated case of Mr. W. F. Windham will further illustrate this principle. There are also other reasons why this case should be somewhat minutely examined; yet as the inquiry lasted thirty-four days, as one hundred and forty witnesses were examined, and as the evidence which was received extended over the whole of the defendant's life, such an examination is incompatible with the limits of a work of this description.

This was a petition for an inquiry into the state of mind of William Frederick Windham, of Felbrigg Hall, Norfolk, instituted [66]by his uncle, Major General Charles Ashe Windham, and fourteen other relatives. The order was made on the 23d November, 1861, and the inquiry commenced on the 16th December of the same year. The petitioners alleged that Mr. Windham labored under congenital deficiency of intellect; and it was upon the other hand asserted that Mr. Windham's mental condition, if below the normal standard, was due to defective education, and was not the result of congenital impairment of intellect. It was proved that he had been sent to Eton, but that he had profited very little by the means of education which were placed in his power. He was wholly unlike other boys, and when he came of age, in 1861, his conduct was such as to lead to a belief, in the minds of those who were acquainted with his position, that he was insane. It was further proved that he was utterly deficient in business capacity; that he was extravagant in purchasing articles, which he did not require, at exorbitant prices and in unnecessary quantities; that in consequence of such acts he incurred enormous debts, without having any reasonable prospect of being able to meet the demands when they came due; that he was guilty of gross indecency of language and conduct in public places, and that even the presence of ladies was not a restraint; that his appetite was voracious; that he associated constantly with people of the most indifferent character, and that three weeks after he came of age he married Miss Agnes Willoughby, a woman of disreputable character

and life; that he married her, knowing that up to the night previous to her marriage she had lived with one of his friends as his mistress; that having married her, he infected her with the venereal disease, and subsequently presented her with jewelry of the value of from £12,000 to £14,000, and settled £800 a year on her for life; that his income at the time he did this was not more than £1500 per annum.

The evidence further went to show that, although his wife subsequent to her marriage cohabited with another man, Mr. Windham condoned this act by residing with her even after her adultery; that he was in the habit of acting as a railway guard, was careless as to personal cleanliness, and on occasion displayed an utter want of feeling. These are the facts which were chiefly relied upon by the petitioners. The ninety witnesses who were examined on the other side gave the impression that all these eccentricities were harmless and rather amusing jokes. Their mental attitude seemed [67] to be that of a broad grin. There was much playfulness in all these actions they thought.

But the medical evidence in the Windham case was the most peculiar feature. Drs. Forbes Winslow and Dr. Mayo were appointed examiners by the Lords Justices, before whom the petition came, and Dr. Bright was associated with them as assessor. The examination of these medical gentlemen seems to have been conducted with the greatest care. They came to the conclusion that Mr. Windham, the respondent, was in a state of mental imbecility; that he was a person of unsound mind, incapable of managing his affairs. They did not regard the amount of mental unsoundness under which he labored as incompatible with the acquisition of a certain amount of classical knowledge: they looked upon it as consistent with a capacity to write letters, to settle small accounts, and to make purchases. Still, they regarded him as a person of weak and childish intellect, as dead to moral obligations. Dr. Southey, who was also appointed by the Lords Justices to examine the respondent, came to the conclusion that he was laboring under imbecility, and was of unsound mind, and did not hesitate to express his opinion that "he was not capable of managing himself or his affairs."

But there was medical evidence on the other side. Dr.

Tuke regarded Wr. Windham as sane, and he came to this conclusion after considering—1st, the powers of observation of the alleged imbecile; 2d, the manner in which he had conducted the arrangements for his defence; and 3d, from his delicacy in conversation. He did not regard it as at all inconsistent with the sanity of Mr. Windham that he should get into debt to the amount of £25,000 or £30,000, or that he should give £14,000 worth of jewelry to his wife. Dr. Sutherland, Dr. Hood, of Bethlehem Hospital, Dr. Seymour, Dr. Conolly, and Mr. Handcock, had examined Mr. Windham, and regarded him as a person of sound mind and as capable of managing his affairs.

Mr. Warren, one of the Masters in Lunacy, in addressing the jury said: "The question to be decided was not whether Mr. Windham was absolutely insane, but whether there was such imbecility of mind, not amounting to insanity, as to render him liable to be robbed by any one. The broad question was whether he was of sufficiently sound mind to be entrusted with the management of himself and his affairs. Mere weakness of character, mere liability to impulse, good [68]or bad, mere imprudence, recklessness, and eccentricity, to which might be added immorality, did not constitute unsoundness of mind, unless, in looking fairly at the whole of the evidence, there was good reason to refer them to a morbid condition of intellect. They might furnish evidence of unsoundness, but they did not constitute it."

Mr. Windham was subjected to a lengthened examination before the jury, and the result of these proceedings was that on the 28th of January, 1862, the jury, by a majority of fifteen to eight, returned a verdict that Mr. W. F. Windham was of sound mind, and capable of taking care of himself and his affairs.

The argument that because Mr. Windham labored under no illusions or delusions, that therefore he was not insane in the ordinary sense of the word, is beside the mark, as Dr. Taylor has pointed out,[1] as their "absence proved nothing for or against the existence of imbecility or weakness of mind." The test of imbecility is undoubtedly conduct, and

[1] Taylor's Medical Jurisprudence, p. 1081.

that conduct which has become fixed and permanent, namely, disposition. And the objection raised by a writer in the "Solicitors' Journal," that unless the system of lunacy inquiry be materially changed every commission may amplify itself into a biographical inquisition,[1] has evidently been made in entire ignorance of the subject, The only reasonable method of coming to a right conclusion in any case of imbecility is from a careful consideration of all the facts of conduct during a long series of years. That this method sometimes produces unsatisfactory results may be due either to the inherent defects of medical testimony or to the liability which even British juries have of coming to erroneous conclusions.

§ 96. **Changes in the Law.**—We have seen[2] that in the time of Lord Hardwicke it was necessary for the jury to find a man absolutely insane in order to entitle him to the protection of the law; but in the beginning of this century, Lord Eldon decided that the Court of Chancery would regard itself as authorized to issue a commission provided it was made out that the party was laboring under such imbecility of mind as to render him incapable of proper and provident management of his affairs, and rendered him liable to be robbed by any one; and that this imbecility was something different from insanity. Lord Lyndhurst followed Lord Eldon, and adopted his views with regard to this matter. Hence, it arose that the term "unsoundness of mind" came to have an enlarged meaning attached to it, and this new definition has been acted upon in the Court of Chancery since that time.[3]

It has been a subject of regret to some legal writers that the term "unsoundness of mind" should have become wider in its significance than it formerly was; a regret which is somewhat stupidly conservative. How can law stand against fact? It has been tried more than once, and what has been the result? That shallow thing law has been torn in frag-

[1] Solicitors' Journal and Reporter, vol. vi. p. 227. February, 1862.

[2] Ante § 30.

[3] See also Nailor *v.* Nailor, 4 Dana, Ky., 339; Shaw *v.* Dixon, 6 Bush, Ky., 644; Commonwealth *v.* Schneider, 59 Pa. St. 326.

ments by that tremendous reality—outraged facts. Such law is a lie; and although it may survive for a little while, it cannot live. Even in Shelford the following sentence is to be found: "It is to be lamented that the original meaning of the term, 'unsound [63]mind,' should have been departed from, and that so much latitude and uncertainty should have been given to it as are implied by the words of Lord Eldon.[1] For if unsound mind does not mean a deprivation of reason, but a degree of weakness, and the Crown can issue commissions to try whether a party be of sufficient understanding to manage himself and his affairs, this is such a vague and uncertain ground of inquiry as will open a door to invade the liberty of the subject and the rights of property."[2]

It is somewhat difficult to share this regret. The object of all such definitions seems to be to facilitate the administration of justice. They are, as it were, the machinery of the law. And it would require to be shown that the introduction of this term, "unsoundness of mind," and the admission of the mental state to which it corresponds as a reason for depriving an individual of his personal liberty, and the management of his property, has been detrimental to the due administration of justice before they are condemned. Mr. Shelford's objection that if unsound mind does not mean deprivation of reason, but a degree of weakness, seems to be due to a want of thorough appreciation of the meaning of the terms. Some degree of weakness seems to us to amount to what would fairly be designated a deprivation of reason. And as in law a deprivation of reason is only an inference from conduct of a certain character, so a certain degree of weakness is as easy of inference from the same facts. But it seems most difficult to get lawyers, who worship a method which has arisen from an obsolete system of jurisprudence, modified by the requirements of progressing epochs, to understand that the true method is the method of nature, and that the term introduced by Lord Eldon allows of a nearer approach to the actual facts of mental aberration than could be made without some such distinction. It seems to be a strife about words.

[1] In re The Earl of Portsmouth, 22d April, 1815.
[2] Shelford's Law of Lunatics and Idiots, 2d ed. p. 5.

Why should not law afford its protection to a man against his own diseased weakness? We have in another place compared mental disease to duress, and surely, as when the mental weakness is of such a character as utterly to deprive the individual of all power over the management of his affairs, where it can be distinguished from simple stupidity, as it always can, if the rules that have been laid down are closely attended to, in such a case the law does well to interfere and [61] protect; as in a case of duress it would relieve from a contract which had been entered into under force or fear. Lord Eldon has well said: "Provided it is made out that the party is unable to act with any proper or provident management, liable to be robbed by any one under imbecility of mind, not strictly insanity, but as to the mischief calling for as much protection as actual insanity, the Court has felt itself authorized (though certainly many difficult and delicate cases with regard to the liberty of the subject occur upon that) to issue the commission."[1]

Still, as we have seen, a mere finding by the jury that the subject of the inquiry is of weak intellect, or that he is unable to manage his affairs, is not sufficient to warrant the issue of the commission. But that the term imbecility, as it is used by Lord Eldon in the last quoted case, and as it is explained and used in this work, falls under, and explains the meaning of the phrase "unsoundness of mind," we are inclined to believe. "The term unsoundness of mind," according to Mr. Amos, "in the legal sense, seems to involve the idea of a morbid condition of intellect, or loss of reason, coupled with an incompetency of the person to manage his own affairs;" and yet he says, in the same article, "Soundness of mind is a legal term, the definition of which has varied, and cannot, even in the present day, be stated with anything like scientific precision."[2] With regard to what the law regards as perfect capacity, the averment to be contained in a common *condidit* will indicate a standard. It says that the testator was of "sound mind, memory, and understanding, talked and discoursed rationally and sensibly, and was

[1] Ridgeway *v.* Darwin, 8 Ves. 65.
[2] London Medical Gazette, vol. viii. pp. 419–421.

fully capable of any rational act requiring thought, judgment, and reflection."

§ 97. **How a Commission may be Superseded.**—Before concluding this part of our subject, it may be well to state that commissions may be superseded, but only upon evidence as strongly indicative of sanity as the evidence on which the commission issued was indicative of insanity.[1]

[1] Re Dyce Sombre, a lunatic, Law Times, 1844, vol. iii. p. 485. See 16 and 17 Vict. c. 70, § 152, and 25 and 36 Vict. c. 86, § 10. See also Lackey *v.* Lackey, 2 B. Monr. 278; Matter of Russel, 1 Barbour, C. 38; Matter of Mason, 1 Barb. R. 436; Matter of Barbour, 2 Barb. C. R. 97; John Beaumont's Case, 1 Wharton, 52. As to traverse of an inquisition, see 16 and 17 Vict. c. 70, §§ 148, 149, 150, 151, and 25 and 26 Vict. c. 86, § 7.

CHAPTER VI.

MANIA.

§ 98. **Health and Disease.**—[78]Diseases have histories, and he who would rightly understand a disease must know something of its cause and course. Many men have made a careful study of disease without first arriving at any thorough conclusions as to the conditions of health. But as disease is a departure from health, it can only be thoroughly understood by those who know in what health consists. Any excellent pathology must be preceded by a careful physiology. Perhaps the significance of this fact will be the better appreciated in connection with the consideration of the commencement of disease. Seeing a thing in the making is the way to understand it when made. The process which goes on thus before our eyes is an actual synthesis. So it is that the observation of the progress of a disease is the easiest way of becoming acquainted with its real nature. How much a thorough knowledge of the beginning of disease might tend to facilitate its cure, it would be difficult to speculate. The little deviations from the normal state are the types of greater alienations. Disease has a potential and a kinetic energy. In its progress, it parts with its potential energy and gains kinetic. It is this kinetic phase of disease which is that which is really to be dealt with by the physician, and the excellence of becoming acquainted with disease in its potential form is therefore evident. To know the beginnings of things is to know something of the ends and middles too.

§ 99. **Mental Disease.**—Now, in considering a case of insanity, we become acquainted with certain peculiarities of conduct, of thought, of feeling. If a man believes that he constantly see dogs, and that they are worrying a child—if we

become assured of the fact that he really has this delusion—we become acquainted with a mental symptom of insanity. He is in a condition in which he is unable to distinguish between subjective [79] thought and objective thought: in relation to these imaginings his subjectivity has become objective. So if a man's conduct is entirely different from that of the rest of mankind, if the motives which influence the actions of ordinary human beings have not the same effect upon him, we infer a certain intellectual obliquity, owing to a similar loss of appreciation of the relativity of the mind and its *other* matter. As yet, however, all our inferences have only gone a little way; and the question naturally arises, what is the cause of this loss of power to distinguish between subjective and objective? Now, the answer invariably given to such questions is, that all these mental symptoms are due to some pathological condition of the nerve centres. True, although much attention has, in recent times, been paid to pathological anatomy, there are many cases of mental unsoundness in which no organic lesion can be discovered subsequent to the death of the patient. But little doubt exists in the mind of any who have considered the subject that all mental unsoundness, whether it be delirium, como, idiocy, mania, or dementia, is due to some morbid condition of the organism. The fact that even after well-marked insanity no pathological change sufficient to account for the mental symptoms which existed during life is discoverable, only proves that the means of research and observation are defective; and the fact that in proportion to the better acquaintance of pathologists with the anatomy and the sensible qualities of brain, in proportion to the care with which post-mortem examinations have been performed, has been the rarity of those cases in which the organism presents no morbid changes, points to the above explanation as the truth of this much disputed matter. That this has been a subject upon which opinions have differed very widely is a matter of history, and many people even at the present day would object to hearing the brain called the organ of mind. There is some reason for this prejudice, for some enthusiastic physiologists, when it has been granted that mind is dependent upon brain for its manifestations, at once assert the non-existence of mind, and

say that thought is a function of brain. That the brain secretes thought is a somewhat fashionable tenet. And it is the horror of this doctrine that induces many people to hesitate before they admit the dependence of mind upon brain for its external manifestations. Physiologists assert that, whatever mind is, it is brought into connection with matter by means of brain. But the truth of the matter is this, that nothing but thought actually exists. But [80] thought becomes objective through its other body. Brain, therefore, is necessary for the externalization of thought. Thought exists without brain, but it is only made manifest in conduct by means of brain, just as light may exist without shadow, but it could not be cognizable to mortal eye without darkness. Now, suppose a lamp-flame to shine through a patterned globe. The light throws the shapes which are upon the globe upon the walls of the room. Every flaw in the glass makes a contortion in the rays. And so it is with mind and brain. Every pathological condition of brain produces a contortion in the rays of thought, produces peculiarities in that external thought which we call conduct. In this way there can be no act done, no thought thought, no feeling felt, which is not dependent for its externalization upon brain, and any abnormal manifestation of thought is due to some morbid condition of the medium of its externalization. This seems to be a theory which is compatible with the actual discoveries of science and with the higher truths of philosophy. These morbid changes may themselves be due to thought. We find that much insanity is owing to mental shocks, to anxiety, and the like. This pathological condition might, to return to our simile, be compared to the cracking of the globe which is about the light, by reason of something connected with the light itself, as, for instance, the heat. But for all our purposes in this place it will be sufficient for us to consider a pathological condition of some of the nerve centres as the proximate cause of all insanity.

§ 100. **Mental Defect and Bodily Disease.**—It is well to remember that insanity may exist while all the bodily functions are healthy, but that it is very frequently associated with epilepsy, apoplexy, and other cerebral disorders; or

that it may arise in the course of such diseases as fevers, phthisis, acute rheumatism, and the like. Thus it is that the morbid action which arises, it may be in the digestive system, is reflected to the brain by that peculiar nervous sympathy which it ought to be the object of medical science to endeavor to understand. This fact does not, however, militate against the theory which has been advanced above, and it explains the position of the philosophic medicists who have argued that the brain is not the seat of insanity. Some have supposed that insanity consisted of a morbid condition of the vital principle, and others have gone so far as to assert that insanity was due to a morbid condition of the soul itself.

§ 101. **Pathology and Mental Disease.**—For a long time the methods which were applied to the discovery of the pathology of [81] ordinary diseases were not applied to the pathology of insanity, and it is only very recently that any real system of pathological examination has been instituted in our large institutions for the insane, which have all along been talked about as magnificent fields for observation, while the only method by which observation could be made of the least service to humanity was rarely or never had recourse to. Of course much, very much remains to be done. Robert Browning, borrowing from Goëthe, unconsciously perhaps, speaks of the

"Petty done, the undone vast,"

and to nothing could this phrase apply with more force than the so-called science of the Pathology of Insanity. But the recognition of its importance is certainly an effort directed in the right way. If, then, it is understood that the brain has a certain structure and qualities, if it is understood that in this respect it is exactly similar to a nerve or a muscle, and that it is its properties and functions which must be the object of the study of the morbid anatomist, some advance has been made. But, as Professor Bennet has said, "Psychologists content themselves with repeating well-known clinical observations, with the ordinary morbid anatomy or density of the brain, and with the metaphysical speculations which have been pushed as far as, if not further than, human

intellect can carry them. Need we feel surprised that the true pathology of insanity is unknown? What we desiderate is a careful scrutiny of the organ. Hitherto the difficulties of such an investigation have been insurmountable, in consequence of our imperfect methods of research. But let any one possessing a competent knowledge of histology and the use of our best microscopes with the opportunities our large asylums offer, only now dedicate himself to the task, and he may be assured that while extending the bounds of science he will certainly obtain an amount of fame and honour that few can hope to arrive at."[1]

§ 102. **Bodily Organism and Mental Function.**—With regard to what has been done in this science of pathology we must be content to say very little in this place. But the recognition of the general principles stated above is necessary to the understanding of a complete system of medical jurisprudence of insanity. Further, in explanation of the statement that frequently [82] insanity exists in cases where post-mortem examination can reveal no organic lesion, it is well to remember that pathologists are agreed that in most cases where changes are observable they are due to a long-continued exaltation of action in the part to which they have given the name *irritation*. Abnormal vital action then produces derangement in the functions of the organ in which it occurs, and does not, at the same time, produce any discernible change in its appearance. Often we might as well try to discover a change in the hand of an artist, indicative of the exaltation of function which is called skill, as endeavor to find any physical indications of the abnormality of function which is designated disease. But that a change has taken place is surely a perfectly fair inference. We cannot see or feel the imponderable ether which is in space and which is the medium for the transmission of light and heat, but we believe in its existence. So it is with those minute changes which have taken place in the organism. One thing is to be remembered, and that is, that there is a perfect parallelism between insanity and other diseases. In its causes, its rise,

[1] Lectures on Molecular Physiology, Pathology, and Therapeutics. Lecture iv., Lancet, April 25, 1863.

its progress, in its termination in death in chronic disease or in cure, it exactly resembles any ordinary bodily disorder. In its possible modification by the use of drugs, and even in the possibility of its being influenced by the mental impressions of the individual, there is much that is common between it and ordinary physical disease. Its inception is generally marked by sleeplessness, sometimes by pain or heat in the head, and not unfrequently by a considerable alteration in the feelings and emotions of the individual affected.

§ 103. **Mania: its Symptoms.**—It is evident that what would be a rational belief to one man would be a delusion to another. That conduct which would be indicative of insanity in one man would be indicative of mental health in another, and this fact does not depend upon the mere accidental differences of rank, position, or means, but upon actual difference of mental constitution. A man's thoughts in health bear a certain relation to his environment, and that relation is not the same in any two men. One loves to live in the dusty atmosphere of a museum, while another enjoys risking his life in climbing the Matterhorn. One man finds pleasure in dancing, and another only feels happy when he is beside running brooks which murmur through a green country braided with hawthorn hedges. Yet, notwithstanding this wonderful variety, there is a persistent unity. Although each thinks that his neighbor's enjoyments are [83]absurd, yet each is in reality influenced by the same motives, although they are connected with different objects in the world of sense. The past life of each has an influence on and determines the flow of energy in the present. The man who loves dancing probably does it well; everybody acknowledges that he does it well. And this is one of the reasons why he likes it. The exercise of skill is pleasant in itself; the association with persons of the other sex; the rapid motion; the adaptation of motion to the rhythm of the tune—all these are ordinary motives. The man who climbs the Jung-Frau is influenced by exactly similar considerations; he likes to be talked about. To be thought bold is pleasant. Then he may have got to the top first, or before some others of his party, or in a shorter time than any one who has been up this year. The exertion

itself and the consciousness of having overcome difficulties, of having surmounted obstacles—all these are the ordinary inducements of a healthy mind to action. So it is in the case of the man who loves the country, or who delights in minerals or stuffed birds. But the unhealthy mind is one which is not influenced in the same way as that which is in a normal condition. Eccentricity, so long as the motives which induced to the peculiarity in the first instance, and the habit which made permanent this departure from the symmetry of character in the second are healthy, is not a symptom of insanity. But where there is a well-marked change of character without any adequate external cause, then it is certain that mental disease of some sort exists. Thus, that a man should be saddened by a death is natural. That in some characters this sadness should continue for a very long period of time, and that habit itself should tend to continue this melancholy, is what we should expect from a careful study of human nature. Indeed, even sorrow becomes in time a luxury, and there is truth in Rogers' lines:

> "Go, you may call it madness, folly!
> You shall not chase my grief away.
> There's such a joy in melancholy
> I would not, if I could, be gay."

All this is compatible with perfect mental health. But if we find an individual suddenly becoming sorrowful without some such external cause; if we find exaggerated fears as to the safety of a soul and the wrath of God; if we discover a morbid consciousness of self, then we are in a position to diagnose insanity.

§ 104. **The Method of the Study of Insanity.**—[84] Wilhelm Meister thought that the true way to study the character of Hamlet, that great psychological riddle, was, in the first place, "to investigate every trace of his character as it had shown itself before his father's death, to endeavour to distinguish what in it was independent of this mournful event, independent of the terrible events that followed, and what most probably the young man would have been had no

such thing occurred."[1] Now, there is much to be said for a similar method in the study of insanity. A careful comparison should be instituted—at least, in all doubtful cases—between the character and disposition of the individual while sane, and the character and disposition as influenced and modified by the presence of disease. That this will in all cases yield a light where, but for some such method, there would be darkness, seems to us certain.

§ 105. **Early Indications of Mania.**—With regard to the early indications of the presence of mania, the following statements seem to be true. It is necessary to distinguish between acute mania and acute mania with delirium. The latter has a rapid course either to recovery or death: the former may continue for months without much danger to life. Mania proper may be preceded by premonitory symptoms, or it may come on suddenly. One of the most frequent premonitory symptoms is slight depression. Guislain believed that this occurred in the great majority of cases.[2] This is followed by some peculiarities in conduct, by some stupid business transaction, by something which the individual, if he had been "quite himself," would not have done. Not unfrequently, the individual manifests a strong desire for spirituous liquors, and often yields to this desire. At this stage of the disease there may be slight derangement of the digestive functions, of the circulation, and of nutrition. The pain in the head which we have already noticed, accompanied by sleeplessness, agitating dreams, crowding illusions, vertigo, tenderness of the abdomen and gums, are also frequently to be met with. Subsequent to this stage, eccentricities and extravagances of conduct, of speech, of behavior, become persistent, and motives which were formerly efficacious as restraints are now utterly futile. The individual loses all sense of propriety and of decency, becomes mischievous in an extreme degree, wet and dirty in habits, abusive in language. Degeneration proceeds, and the little

[1] Carlyle's Translation.

[2] See also Georget Dictionnaire de Médecine, art. Folie.

power of control that the [85]individual was formerly able to exercise over himself is lost. The intention of giving trouble and annoyance now no longer exists: the individual raves incoherently: delusions of the most incongruous and absurd description chase one another through his brain: there is no coherence even in his false beliefs: the language is obscene and disgusting, the habits are filthy: his acts are full of the same incoherence that distinguishes his thoughts: he breaks windows or pieces of furniture, tears clothes, or practices self-abuse. With all this, however, the bodily health of the patient is generally good. If the strength of the individual has been much impaired previous to the commencement of the mania, the violence of the disease may cause death through exhaustion. But if the constitution is good, the mental excitement may continue for weeks or months without leading to a fatal termination.

§ 106. **The Sane Consciousness of Maniacs.**—It is a curious fact that maniacs, even in their most violent moments, seem to be somehow conscious of the strange incongruity and absurdity of their conduct. And even when the fury is at its worst, many of the acts seem to be the result of a bravado, very much like that which exists in sane men, and which often leads them to do all manner of stupid and even criminal acts. "I am convinced," says Langerman, "that even in the highest degree of insanity, there still remains a trace of moral discrimination with which we may connect the train of the patient's ideas."

§ 107. **Anæsthesia in relation to Mania.**—When the disease is at its height, there is an anæsthetic condition of the body. It is a peculiarity of all strong emotion that it concentrates attention: and when attention is concentrated on one thing it is abstracted from another. Nothing is truer than the fact that we have to go to meet sensations; that the mind trysts, as it were, with pain at the periphery, or it is not felt. So it is not difficult to understand that the strange strength of emotion which we find in mania should render the individual insensible to heat or cold, hunger or thirst. Again, the muscular power seems to be considerably devel-

oped in all cases of mania. Anything done "with a will" is powerful. Most of the sane man's acts are only half-acts. Motives there always are which suggest inaction, and these are almost as powerful as those which urge to action. It is, as it were, with the force of the difference between these that a man works. An ordinary sane man is always half-hearted in all his doings, and this makes him weak. The maniac is in earnest about whatever he does. Consequences do not weigh with him as they do with his sane neighbor. He is not careful either of others or himself. It is this that makes him strong. Enthusiasm is, as it were, a sort of direction of mania to a single purpose.

§ 108. **Voice, Eye, Skin, and Appetite of Maniacs.**—[86]Some other symptoms which are occasionally overlooked are worthy of mention. The voice of the individual is changed; the eye has a strange expression which the words "wild" and "glassy" but inefficiently convey. Again, the odor of the skin is to be noted in any complete enumeration of symptoms. As the perfume of the skin of healthy individuals is a source of pleasure, and is intimately connected with the sexual functions, so the odor of individuals who labor under mania is disagreeable, and is, along with peculiarly offensive odor of the intestinal excretions, to be accounted for by some chemical change produced in the organism by the nervous disturbance. Again, the appetite is generally good, or, rather, voracious. The patients become thinner. They occasionally pass a good night, but sometimes pass weeks without indicating the least necessity for slumber. The tongue may be foul, but, on the whole, the general health is good. Enough, however, has been said to enable those who are brought into relation with the insane to recognize this form of insanity. And while it was necessary to say something concerning the most prominent symptoms of mania, it will be understood that this is not the place to dwell particularly upon the phases of each of the kinds of mania which may be distinguished.

§ 109. **Classification of Mania.**—Some general description was necessary before classifying the species of mania ac-

cording to their mental symptoms. This classification is not difficult. There is evidently a well-marked distinction in nature between the cognitive powers of mind and the desiring and feeling powers or faculties. The one is the intellectual part of a man's nature; the other the emotional part. As the operations of these two parts of humanity upon the outside nature which is presented to them are very different, so effects of external nature upon those two classes of powers vary infinitely. This enables us to introduce a broad distinction between the morbid conditions of the brain, which is founded upon the fact that in many cases the intellectual nature of a man alone seems to be affected by disease; while, in other cases, the intellectual faculties are to all appearance intact, while the emotional are manifested through or by means of a diseased organism. Thus, then, we distinguish between intellectual and moral (emotional) mania.

§ 110. **Further Classification.**—But it will be understood by those who know anything of mind that neither health nor disease is a constant quantity in all the [87] faculties of mind. Habit digs trenches, and healthy or diseased energy runs through them as water does in the river course. One man has a good memory, and another has a bad memory. One man has a memory for dates, another for faces, and so on. And as we find that men have skill in certain acts in health, we would expect to find that they were incapacitated from doing certain acts by disease. As men argue from the height of the Himalayas and Andes to the depths of the sea, so might we have arrived at some conclusion as to the characteristics of disease from the known qualities of health. And the fact is that observation enables us to confirm our expectations. We find that as the mind may sometimes be said to be wholly sane, so may it be said, upon occasion, to be wholly mad. And as we find one faculty in health towering like a mountain above its neighbors, so in disease we find that, as it were, depths of disease sink below the ordinary healthy level of a sound mind. So we find that we have arrived at another principle of classification, and we have under intellectual mania, general intellectual mania and partial intellectual mania; and under moral mania we have general moral

mania and partial moral mania. Of these, then, in their order.

PART I.

§ 111. **General Intellectual Mania.**—[88]We have seen that mania is often preceded by depression—that it is marked by a great change in the desires and feelings and habits of the individual. In this form of the disease, however, we would expect to find not only a disordered state of the cognitive faculties, but a total perversion of all the emotional qualities of the individual. The maniac becomes indifferent to those whom he loved most, insensible to ties which formerly influenced his whole being, and all the kindly affections and noble desires are replaced by the worst characteristics of a depraved disposition and the most filthy propensities. But still the terrible chaos of thought, broken—as a storm-cloud is by shafts of light—by periods of coherence, is the most marked feature in some cases; and these are the cases of which we would speak in this chapter. We have already alluded to the psychical symptoms of the early stages of the disease, but a more minute description is necessary.

§ 112. **Mental Symptoms of Mania.**—At first, the individual may show symptoms of irritability, and along with this there is a more rapid succession of ideas. This is not simply the healthy increase of mental activity. Almost at once there are signs of peculiarity in the association of ideas. Memory is exalted. As after an earthquake fishes are found on the shore that were never seen before, so in this state of mania, recollections and reminiscences which have not been in consciousness for years return to it. Sometimes at this stage of the disease there is a development of powers of which the individul had not made any use. Thus grave, sad men become humorous, kindly men become sarcastic, dull men become eloquent, and shy men bold. Griesinger mentions a case in which a patient, under these [89]conditions, could strikingly delineate any slight resemblance to animals in the physiognomies of those around him.[1] These

[1] Griesinger on Mental Diseases, New Syd. Soc. ed., p. 283.

symptoms are not by any means common. As we have stated above, incoherence is observable, in most cases, from the beginning. Most ideas which pass through the mind of the maniac are crude, half-thought, "deformed, unfinished, and scarce half made up." They are governed and determined to a certain extent by the impressions of sense. We find, however, that the laws which govern the association of these ideas are not those which govern the ideas of a sane man. Sane men's thoughts cling together. There are affinities in their thoughts. They enter, as it were, into chemical combination, but the thoughts of the individual who labors under general intellectual mania seem to resemble a mechanical mixture in their mental relations. We hear scraps of songs, isolated words, figures, cries, sentences, rhymes, and the like, all jumbled in the conversation of the maniac. Sometimes a similarity of sound seems to have for a time the power of rescuing something from chaos, and the individual may continue to speak in verse. Utter confusion, then, is the characteristic of general intellectual mania. Persistent delirious conceptions cannot be said to exist in it: the false impressions are as unstable as everything else. The condition of mind is apparently a constant stampede of ideas. The fleeting delusive and illusive beliefs are constant in this disease. They may exist with regard to the surroundings of the individual—they may affect the feeling of self. Thus, we frequently find the patient believes himself to be a king, or Mahomet, or God. The extraordinary increase of mental activity conveys the impression of pleasure, of grandeur, of magnificence, to the individual, and influences his delusions. Not uncommon are such assertions as, "I am made of wood," "I am in everything," "The world is my body," which are connected with the same mental impressions, and are due to a want of the power of discriminating between the objective and the subjective. It is evident that to subjectivity alone—if a separate existence of subjectivity in the flesh was possible—self would be the all; and in this diseased state, subjectivity is more prominent than objective existences. But in all these delusions and illusions there is the characteristic of instability. They do not remain. Maniacs are "to one thing constant never." There is no time allowed for the

forma-[90]tion of a habit. There is generally a want of conviction in the reality of the delusions present to the consciousness of the individual himself. Maniacs often laugh at the incongruity of what they themselves say. Still some circumstances remain to be mentioned with regard to the intellectual peculiarities of this disease.

§ 113. **The Incoherence of Mania.**—It frequently happens that in spite of incoherence of the most marked character, the memory seems to be under the influence of the ordinary laws of association. The individual remembers many events and circumstances with perfect accuracy. Dr. Guy relates the case of a lady concerning whom he was consulted. She had suffered from mania for a long term of years, and was subject to paroxysms of extreme violence. "In one of these paroxysms, she had destroyed some valuable papers belonging to her husband, and yet, after the lapse of twenty years, during an interval of extreme tranquillity, she reverted to the occurrence, and expressed her regret at what had happened;"[1] and what Mr. Erskine said[2] shows that the fact has been appreciated by lawyers. He said: "In all cases which have filled Westminster Hall with the most complicated considerations, the lunatics and other insane persons who have been the subjects of them have not only had memory in my sense of the expression—they have not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but have in general been remarkable for subtlety and acuteness. Defects in their reasonings have seldom been traceable—the disease consisting in delusive sources of thought—all their deductions within the scope of their malady being founded on immoveable assumptions of matters as realities either without any foundation whatever, or so distorted and disfigured by fancy as to be nearly the same thing as their creation." This not only shows what it was quoted to indicate, but it also shows that in the legal profession the matter is only very partially understood even by those who have brought much ability to

[1] Guy's Forensic Medicine, p. 179, 2d ed. [2] 8 Hargrave's State Trials, 322.

bear upon the question. Mr. Erskine has evidently been influenced by what Locke says of the insane, that, "having joined together some ideas very wrongly, they mistake them for truths, and they err as men do who argue right from wrong principles."[1] That this is not the case those who know [91] the characteristics of mania are aware. But it is true that the person who suffers from mania has sufficient power of reminiscence to be able to recall and describe events which have happened in the remote past, that he knows all that is taking place around him, and he will sometimes remain calm for a few moments, will listen to what is said, and will even laugh at a joke. And some can even reason concerning their state of mind during the continuance of the attack. Jacobi mentions a patient who said, "It is actually terrible when the thoughts so run into one another in one's head."[2] It is necessary—custom is a sort of law—to say something of the illusions and delusions of mania. Most of the explanations of these phenomena which have been given seem to us eminently unsatisfactory.

§ 114. **The Psychology of Mania.**—We have already said that the mind goes to meet sensation. Even looked at in the light of Professor Bain's system—of what might be called a transcendental physiology, and has been called "a natural history of mind"—this assertion is true. He finds that it is a fact of the human organism, that there is a power of generating active nerve-currents from within outwards, which seems to be a necessity of mere sensation. And it has been remarked that this theory is not unlike that of Kant himself, who showed that intellectual function was, in fact, the greater part, if not the whole, of sensuous affection. If this be so, (and we cannot doubt its accuracy,) the whole question of illusions and delusions becomes clear. Just as in dreams the objective is dissociated from the subjective, so in insanity the individual's subjectivity, being so much strengthened by the progress of disease, impresses its own character upon the objective facts of the universe. It is as if a king said to all foreigners who came to his frontier, "Before

[1] Essay, Book II., ch. xi. § 13. [2] Die Hauptformen der Seelenstörungen.

you cross the boundary, you must wear the dress of my subjects." So it is with mind: every sensation is dressed, is shaped—it may be deformed and distorted, by mind, and so it comes to the audience chamber, consciousness, with precisely the same guarantees of reality as any of the sensations which are conveyed to the mind of the insane person. "Error," says Cousin,[1] "is one of the elements of thought taken for the whole of thought. Error is an incomplete truth converted into an absolute truth." The subjective impression of the lunatic has become objective to him. There is a want of harmony between the *a priori* forms [92] of thought, and the other of thought, which is the *outer* of mind. Thus Kant is right when he says, "The senses do not deceive us at all, it is only the judgment which deceives us." Thus, when the rustling of leaves is mistaken for whispers, when the child tries to catch at the moon as it would at a bright object on the table, when a shadow is mistaken for a substance—all these things are due to errors of judgment. This is well illustrated by Feuchtersleben, who says, when speaking of illusions of the sense of touch: "Among the illusions of touch of a psychical nature, may be reckoned the well-known experiment with a little ball of marble, which, being moved between two fingers laid across each other, appears double, because the judgment ascribes the segments of the ball felt in opposite directions to two objects."[2] So it is with delusions, between which and illusions the distinction is more apparent than real. It is the subjective becoming objective, as in the case of illusions. That this is common even in a healthy state is proved by any popular entertainment of wizard magic, by any popular work on optical illusions, and by the experience of many persons who are quite able to observe their own mental processes with accuracy and intelligence. Thus, Pascal believed in a fiery gulf or abyss close by his writing table.[3] Trousseau mentions a gentleman who, "although perfectly sane, had an irresistible desire to shriek." He yielded to this desire very frequently.[4] Swedenborg saw

[1] History of Philosophy. Appleton & Co., New York, 1852, vol. i., p. 146.
[2] Medical Psychology, Syd. ed., p. 231.
[3] Mentioned in Conolly's Indications of Insanity, p. 316.
[4] Lectures, p. 151.

spirits,[1] and Goëthe relates that during a ride on horseback he saw, as in a waking dream, himself riding to meet himself in a light gray dress.[2] And we ourselves know a gentleman who has the power of recalling any scene he has looked upon. He says that this vision is quite different from ordinary memory, and that it is as real as any of the impressions conveyed in ordinary sight. Many children have the power of projecting their own thoughts on the darkness. The painter Spinelte, who had represented the Devil in a most frightful form, at length fancied he saw him in reality. And Blake, who painted demoniacal forms, is said to have had visions of them.[3] That [93]many of the extraordinary phenomena of second sight may be accounted for by the fact of the possession of this power seems to us certain.

§ 115. **Characteristics of Mania.**—One or two more observations may be made with regard to the distinguishing characteristics of mania; and the whole of this description will, it seems to us, throw light upon the phenomena of insanity in general. Thus, it may be remarked that many of the strange actions of a madman or maniac are due to his delusions; but many of these are to be ascribed to the simple overflow of energy, which cannot find vent in any ordinary healthy channel, and which produces excessive muscular activity. The madman's acts and the sane man's laugh are closely connected in their psychological aspects. Again, the acts of the person who is maniacal are very often such as no sane person would believe to be suited to the attainment of the object which may be in view. The insane person gains nothing by the experience of failure. *Quoad* his insanity, he is not moulded by his faults. These are the characteristics of mania in so far as they seem to be necessary to the application of all the medico-legal questions which can arise, and to the decision of all points with regard to the legal relations of the individual, laboring under general intellectual mania, to the state.

[1] Emerson's Representative Men.

[2] Vol. xxvi., p. 83.

[3] Some very interesting cases of illusion will be found in Sir David Brewster's Natural Magic.

§ 116. **The Psychology of Monomania.**—Monomania probably is due to an abnormal increase of the rapidity of thought in one direction towards the external objective universe. As in every other case, we find the type of this disease in healthy mental action: we are all conscious of the facility which is acquired in any mental process by the constant exercise of the mental function. Life, like water, runs most easily where it has run before. The will shapes actions in clay, but they are cast in bronze or iron without the intervention of the will. And so it is—as with idols—those gods which we have made with our own hands rule and influence our life. Now, health seems to be a kind of unstable equilibrium of forces. Whenever that equilibrium is deranged, then comes disease—aberration. A top when in motion is resting in a position of unstable equilibrium. But if it has a bias, if it is not symmetrical, it rocks, and it will come to rest the sooner. So it is with life and its symmetry. Too much bias in the flesh is disease. Thus it is that the increased rapidity of mental actions or of thoughts with regard to one object or kind of objects causes a decreased rapidity of the exercise of other important mental functions. But want of use is abuse, and abuse soon causes disease. It is in this way that what in health may lead to discoveries, to the advancement of science, or to the manifestation of genius by means of words, when it becomes automatic or unhealthy leads to exalted predominant ideas and monomaniacal misconceptions. There is no more common form than this, and it is frequently manifested in relation to self-consciousness. When self-consciousness becomes a prominent object of thought, it will invariably lead to pride. And nothing is more frequent in this class of cases than to find individuals believing themselves to be kings or queens, persons of the highest rank and greatest influence, great discoverers and propounders of new systems of philosophy, new creeds, and new sciences. All these beliefs will be found to be intimately connected with the life of the individual. The life, however, is not the events only, but the thoughts. Too many persons, in searching for the causes of morbid impressions, in tracing

the evolution of insane thoughts, have been too much inclined to regard the external environment of the individual as alone of any importance, and have neglected to study the thoughts, which are not unfrequently antagonistic to circumstances, and are not always the direct reflection of the objective phenomena.

§ 117. **Monomania in relation to the Feelings of Pleasure and Pain.**—All these beliefs, and the many rapid thoughts which accompany them, are associated with pleasurable sensations. This is common to all states where there is an increased rapidity of thought, and it is equally true that pain is the concomitant of retarded mental activity. Spinoza has said that happiness is always a progress towards perfection; misery a falling back. But that theory does not seem to be borne out by the facts of the disease that is under consideration. Disease cannot be an approach towards perfection, and yet many monomaniacs, when under the influence of disease, will tell you that they never felt better in their lives. If a man is unreasoningly self-conscious, if no rebuke, no indignity, no insult can take from him that intense feeling of self-satisfaction, of great mental and bodily well-being which results from the overflow of energy into a certain mental channel, of course he is happy. Happiness is dependent upon motion for its manifestation. Laughter is an overflow of mental energy into the muscles; and ordinary language marks the commonness of the observation. So it is that there are not unfrequently marked symptoms in monomania which [95] are analogous to the signs of the presence of mania. All strong emotion tends to become external, and in the externalization of feelings the belief in human and personal power has been found, and the pleasureableness of its exercise has been experienced. But there will always be a modification of these maniacal manifestations by other intense ideas, in the form of disease that is under consideration.

"The maniac," says Griesinger, "with simple exaltation of the sexual instinct, seeks to gratify his desire in the most direct manner: he attacks every female who comes in his way, and the nymphomaniac makes obscene advances to every visitor. In monomania, on the contrary, the exalted

sexual instinct, before it passes into action, is guided by new ideas and opinions (of a morbidly exalted kind) which occupy the mind. The patient will then only gratify his desires in the sense of his over-estimate of self and of certain delirious ideas: he only pays his addresses to princesses and illustrious ladies. The female patients have imaginary love adventures with princes and kings."[1]

§ 118. **Monomonia and Delusions.**—Monomania is a disease of that part of the disposition in which the man principally lives, for it surely can be more truly said that a man lives in his thoughts than in the material circumstances that surround him. It is in monomania, therefore, that illusions and delusions are most common, and it is in this form of the disease that these morbid impressions are most persistent. The awful abnormality of genuine mania produces such a "sea of troubles" that no delusion can remain long in possession of the individual. There is a rabble of ideas. Each delusion or illusion is jostled from its place by a host of others. But in monomania there is a peculiar persistence about the morbid impressions. The illusions are always the same. The individual believes that he sees a face which haunts him; hears voices which drive him to do some act; he is surrounded by odors, and the like. The delusions are persistent. The individual believes that the Holy Ghost has been incarnated in a canary bird, or that some worthless object is of enormous value.

§ 119. **Distinction between Mania and Monomania.**—Still, although these impressions are persistent, there is much rationality in monomaniacs. Concerning many subjects they are able to reason with great accuracy, and sometimes with intelligent breadth of conception, which is a higher quality of reasoning than [96]mere accuracy. There is a very evident difference between monomania and mania proper. The manners of the monomaniac are not distraught: they are generally calm, their conversation is generally intelligent, and such excitement as occasionally exists is due, as in sane

[1] Mental Pathology and Therapeutics, (Griesinger,) p. 305, New Syd. Soc. ed.

individuals, to an external motive. It may be, however, that the external motive is misunderstood in consequence of the illusion or delusion of the individual. Of course there is harmony between the manners and conduct of the monomaniac and his diseased imaginings. Monomania of pride finds expressions in gestures which to the individual himself do not seem to have any of the characteristics of grimace. Many persons in asylums are allowed to gratify their harmless liking for gaudy raiment and trappings of ribbons, and their words and gestures are possibly exaggerated in consequence of this indulgence. "A change of skin," says Victor Hugo, "is often a change of soul."

§ 120. **Mental and Physical Symptoms of Monomania.**—But of course their conduct is regulated by their insane ideas, and is a manifestation of the presence of the disease. The other symptoms, which are not to be found in the conduct of the patient, very much resemble those which are characteristic of mania. When the attack is recent there is generally a feverish condition present, and this is followed by sleeplessness, constipation, and sometimes cerebral congestion.

§ 121. **Fixed Ideas.**—It is very rarely the case that a fixed idea which has existed in the mind for some time is eradicated. We find that the deeper rooted a prejudice is, the more difficult is it to root it up. We find that the longer an idea has had possession of us the more difficult is it for us to get rid of this dominant impression. Many persons who have learned to reason ably concerning almost every subject find it as impossible to reason themselves out of some of the superstitions of their childhood as it is to reason themselves out of the belief in the toothache when it is actually present. It is, therefore, not difficult to believe that these fixed ideas which we have in another place called prejudices in the flesh, should be less accessible to reason, that they should be less amenable to treatment, and that in many cases the disease should defy all efforts which are undertaken with a view to its cure.

§ 122. **Other Symptoms of Monamania.**—When the delusions are somewhat obliterated by loss of memory and other mental weakness or by incoherence, the chances of recovery are very small. The chronic monomaniac does not manifest the same mental excitement that has been mentioned as [97]a symptom of the earlier stages of the disease. The strange fixed delusion remains along with a somewhat stupid calm, and with a normal physical condition. Not unfrequently, however, monomania is followed by a state of profound dementia. There is much interest connected with those cases in which insanity is manifested by the loss of language, while all the other mental faculties remain intact. This phenomenon is sometimes shown in relation to single words. A person may drop some words, as it were, out of his vocabulary, or the mental effort which is meant to call up one word may have the effect of calling up another, and that, one which seems to ordinary individuals utterly dissociated from that which ought to have found place in the sentence. Thus, if a man wishes to use the word "yes," and the word "house" be invariably substituted for the simple affirmative, it may, to the individual thus using it, seem to have all the significance of the other word. This disease, which can be traced to a derangement of those laws which have to do with association, and with those powers which have to do with the perception of the relations of identity and difference, must have, in time to come, much bearing upon the questions with regard to the relations of insane persons to the State, and an opportunity will arise which will enable us to state some opinions which ought to guide the admission or recognition of such facts in courts of law. In this place it is sufficient to point out the existence of such a limited disease as aphasia, as it was necessary to point out the fact that insanity is very often partial in a very marked manner, and to recognize the affinity which seems to exist between certain abnormal conditions and certain healthy functions.

§ 123. **The Physical Suggestion of Delusion.**—Much has been said concerning the connection between bodily disease and mental affection. We have the phenomenon of

dreams described and explained upon a similar principle. A man dreams he is in the coils of a boa-constrictor, and awakes to find that the sheet is wound tightly round him. Another dreams that he is in hell, and awakes to find that the candle with which he was reading has set fire to the bed-curtains. And such anecdotes pass for reasoning. So it is that the case given by Esquirol is thought to throw great light on the phenomena of monomania. This is the case of a woman who, during life, believed she was pregnant with the Devil, and in whose womb, after death, there was found a mass of hydatids.[1]

§ 124. **Moral Treatment of Monomania.**—[98] But it is an incontrovertible fact that many illusions and delusions are, so far as we can say, entirely unconnected with any physical impressions, and that, notwithstanding what has been said to the contrary, many of these are dissipated by the skilful application of arguments. "I have often," says one who has devoted a long life to the treatment of mental disease, "done as much good by a kind or clever word, or by well-put irony or ridicule, as by drugs or specifics." One of Mr. Maury's patients, after thinking himself cured of a serpent in his bowels by means of a pretended surgical operation, suddenly took up the idea that the creature had left its ova behind ready to be hatched into a brood of young ones. He was again restored, however, by the dexterous reply of the physician, who assured him that the snake was a male one.[2]

§ 125. **Education in relation to Monomania.**—It is surely as reasonable to expect that in some cases false mental impressions might be educated out of a man just as the evil tendencies which a man has at birth may be eradicated by means of a process of training. Those who deny the former must deny the latter. To many it seems unscientific

[1] A case has just been mentioned to us. A woman who was confined in a lunatic asylum believed that she was delivered of dolls, and was in the habit of fathering them upon any of the male officers of the institution. After her death, it was discovered that she had suffered from enlargement and thickening of the neck of the womb and wasting of the ovaries.

[2] Medico-Chirurgical Review, N. S., vol. xxi., p. 524.

to treat a symptom. But what do we know of any disease except its symptoms? We know a man by his actions, and a disease by its symptoms. As we are content in education if we can shape and modify a man's actions, and are conscious that thus we will modify the individual, so will we, by modifying the symptoms, change and influence the disease itself. And the very best systems of medicines can hope to do no more than this. Why the intellectual symptoms should not be treated it would be difficult to say. To show that some medical men have not failed to recognize the importance of the true use of the highest kind of moral treatment, we may quote one or two cases.

§ 126. **Cases of Successful Moral Treatment.**—"E. W——, a young woman who had been a schoolmistress, laboured under acute dementia. Dementia seems to be the death of the soul: a person can digest, but not think. The face muscles move the jaws, but never shape themselves in that wondrous mosaic of expression. E. W—— sat or stood, she did not care to move: there was not sufficient zeal in her to make her live, she had not enthusiasm enough to wish to die. Tonics, shower-baths, electricity, [99] stimulants, were tried and failed. Hers was a dead soul in a drooping, dying body. One morning, however, upon the occasion of the usual medical visit to the wards, she accosted the physician. She said, 'Doctor, I am better,' and she smiled. Smiles are the ornaments of health's temple: joy, not sorrow, is divine. There was some activity and energy in her movements and gestures. The story of her improvement and recovery was as follows: she explained the circumstances herself.

"At tea-time upon the previous evening, she said, she was in her usual state—conscious of all that was taking place around, but incapable of originating any action, and bowed down by a great weight—saturated by inactivity. A strange nurse entered the ward to relieve one of the ordinary nurses, who was going out on leave. It was a part of this nurse's duty to feed E. W—— with her tea; during the meal she conversed with another nurse as she placed the morsels in E——'s mouth. In the course of the conversation she mentioned that she was somewhat strange to her duties, having just come

from Lincoln, her native town. It was E. W——'s native town and the mention of it raised the ghosts of a hundred dead events—of pleasant days of youth and love, perhaps—memories of home, with well-known faces about the hearth.

"A modern author has said, 'Home is the honey of this world-hive, which cures the stings the bees have given.' And if it is so, sweet memories are the mead that is made from it. Home! to whom is it not a magic word? All your 'prestos!' are frippery in comparison with that one word. It will bring tears into wanderers' eyes and smiles into dying faces, and so it brought smiles and health to the soulless woman. There was sunshine in her life from that moment: she is now energetic, industrious, and of sound mind."[1]

The statement of this case, although suited to popular exposition, is certainly excellent, and so admirable is the paper as a whole, and so closely connected are the cases there described to the subject in hand, that we feel entitled to make somewhat copious extracts.

"M. O——, a man with a very prominent nose, with sunken eyes, and nervous twitching hands, was confined in a lunatic asylum. How many men kill themselves because they are afraid of death! M. O—— was in terror of being put to death; and an imagination, [100] probably in the leading strings of his trade associations, suggested that he was to be 'boil'd down.' He had a conscience, and he looked upon this frightful death as a recompense for those 'wild oats' he had sown in his youth. To sow wild oats, and yourself to be garnered into a cauldron! Inventive Nemesis! Naturally the poor man suffered; who can be comfortable when they stand by while the furnace is being heated seven times? His misery ran into motion, as most pain does, and he would walk up and down and press and wring his hands, repenting as hard as he could for his sins, thinking, perhaps, to appease that boiling-down Nemesis. He would moan and rock himself for hours, and crave assistance from all who would listen to him. There is not much sympathy amongst lunatics.

"Once he was taken to the laundry to assist in carrying some clean clothes. A sad day, that! He reached the door

[1] The Gentleman's Magazine for March, 1871, No. 34, N. S., p. 460

and there before him was a huge boiler, with its fire (like a mouth under its boiler brain) glowing underneath it. He shrieked and fled. Oh! great legs! the head cannot say, 'I have no need of thee.' More heads have been kept safe from blows by legs than by their next neighbours, arms. Well, he fled, naturally believing that his hour was come, and that the laundry was the place of execution, to which he had been unfairly decoyed. One day the medical man of the establishment noticed that this patient derived considerable comfort and satisfaction from assurances of protection, and that in consequence of these assurances he seemed to regard him as in some way connected with his fate. The assurance was an assertion to that effect. It was, however, not sufficiently definite; and so one day he announced with some formality to M. O—— that he was reprieved, and that his execution was postponed for two days. M. O—— had faith as well as conscience, and he believed, and was, during the continuance of those two days, comparatively happy and comfortable. Of course he could not be quite happy; but to be boiled down two days hence is an infinity of bliss in comparison with being boiled down at once. Time is always hope, and hope is heaven. But the sands of two days ran out, and he became restless and unhappy as the time of his immunity came to an end. His medical man again visited him, and assured him that he would be spared for three days. Tears ran down his cheeks on each side of his great water-shed nose, and his thanks were warm and earnest. The visible pleasure of the [101]man tempted his physician to be too kind; and when by various reprieves he had reached a week, making those dead reprieves a stair by which to rise to higher things, he generously lengthened the time to a fortnight. M. O——'s joy was great. A fortnight! Eternity! But it was too long. When ten days had sped he again began to fear—he could not realize it, so that he had to be reduced again to two days. From this beginning, however, he was conducted up to a fortnight, three weeks, a month, three months, with perfect success. One evening, however, the physician was sent for. M. O—— was in agony; there he was wringing his hands again, and piteously moaning. The time of the reprieve had run out, and the superintendent had neglected

to renew it. Soon, however, he began to smile at the reprieves, but still asserted that he could not be comfortable without them. Subsequently their term of duration was much increased, and they ultimately became unnecessary. The man now works in the laundry beside the cauldron. He stokes its devouring maw!"

"B—— was fed by means of the stomach-pump three times a day for as many weeks; for he was brave enough in his fury to meet that snail-death, hunger. What a grand enthusiasm for death he had! Once he inflicted a blow upon his head by means of a plumber's hammer. It was so severe as to take him near to death's door, and for some weeks he was confined to bed. During his illness and tedious recovery, another patient was admitted into the asylum. This man's name was F——, and he was one of those who longed to get anywhere out of the world. This man was associated with B—— under the care of a special attendant. It occurred to his physician to put F—— under the care of B——. B—— was made responsible for F——'s safety! Strange! It seems almost a joke to keep two people out of the grave by the struggle which each makes to get in first. A weird safety to be jostled away from death's door! Strange as it may seem however, this expedient had the desired effect. B—— took F—— by the arm and walked him off, and since that time has devoted himself exclusively to the care of this much less dangerous patient. F—— has more than once endeavoured to shuffle off this mortal coil, and his attempts have always been frustrated by B——, who has never, since he has become the guardian of another's life, seemed to entertain any hostile intentions with regard to his own. In this case, interest in the life and welfare of another has reared anew an interest in his own. His own life has [102]been saved, in all probability, by his endeavours to save that of another. Is not reward the *contre coup* of a good action? There is a great, deep, pathetic humour about this guardianship. B——, the most dangerous, most pertinacious, suicidal patient in the institution, watching F——! There is a detestable meanness in a thief catching a thief; but there is pathos in one suicide frustrating the attempts of another! If F—— only lifted his hands to his throat, B—— put them down. If he approached

the fireplace, B—— intercepted him. If he cast his eye on a dinner-knife, B——, ever watchful, winked, and laid hold of him. When he refuses his food, B——, if necessary, insists upon his taking it, or assists in its forcible administration by means of a stomach-pump.

"They sleep in adjoining beds in the dormitory set apart for patients who are believed to labour under suicidal tendencies; and often in the course of the night B—— rises, and on his bare feet on the cold floor will go noiselessly to see that F—— is all right. In all his watchings he is kind, yet firm. It is a great thing to assist a neighbour to do right, and in that way make the home temptations to do wrong less urgent. Such acts are 'twice blessed.'"

§ 127. **General Remarks.**—There is certainly much interest in these cases, as they not only indicate the forms that monomania may assume, but also point out the true uses of moral treatment. Although in most cases of simple monomania the intellectual powers seem unaffected, except in so far as the single delusion or illusion is concerned, and the individual seems to reason as accurately as he would do in a state of normal health, still in many cases the disorder is not so limited, and the morbid ideas are not confined to a single subject. It is scarcely possible that such a mental parasite as a delusion could coëxist with complete mental health. Upon most subjects a man can scarcely reason fully or well without making use of almost all his knowledge. When, therefore, a large portion of that garnered experience is rendered useless by the existence of a false and persistent mental impression, the deductions of reason are likely to be the less trustworthy. The reasoning of a half man is never so good as the reasoning of a whole man. Of course, the influence of a delusion, or of a false impression of sense, upon the life of the individual, varies in proportion to the influence of the thoughts of the same individual upon the same subject. Thus, if a man believed that he [103]constantly heard the whisper of a silk dress, and was otherwise perfectly sane, one could understand that such a belief could have little or no influence upon the actual life of the individual. But if a man believed that his own wife had entered into a conspiracy

against him—if his disposition was so far changed by disease as to make him hate and suspect those persons whom he had formerly loved and trusted—it would be impossible to calculate the influence of such a diseased condition upon the life of the person thus affected. This is a fact, which the use of such words as monomania or partial mania is very apt to conceal from those who are only partially acquainted with medical psychology, and it is a fact that it is very important each medical man should duly appreciate.

CHAPTER VII.

THE LEGAL RELATIONS OF MANIA.

§ 128. **The Legal Relations generally.**—[176] When an individual is incapable of judging of the legal character of his acts by reason of acute mental disease, he is irresponsible for those acts should they contravene the criminal law, and he is held incompetent of entering into such acts where they only amount to civil transactions. The consideration of mania in its various phases has already indicated under what circumstances this form of mental disease will deprive a man of his civil ability or of his criminal responsibility. Still it is, perhaps, more easy to appreciate the legal relations of acts when they are separated from those medical relations in connection with which they have been already partially considered. And we, therefore, propose to consider the whole of the questions which are likely to arise in courts of law in relation to this disease. We will consider these in the order of their importance: in the first place, dealing with the question of responsibility; in the second, with that of testamentary capacity; and in the third, with the capacity to enter into contracts, and which entitles an individual to personal freedom and to the personal management of his affairs.

§ 129. **Cases in which the Plea of Insanity is generally Pleaded.**—It is evident that the plea of insanity can be raised in any criminal inquiry; but as it is sometimes thought better to undergo a slight sentence for a minor offence rather than be kept in prison at her Majesty's pleasure, it is practically only set up in cases of a graver [177] character. This naturally leads to a question as to whether the present mode of dealing with the persons of lunatics who have committed a crime is altogether satisfactory. In this place, however, we

cannot discuss the question, and may only mention that in Scotland a somewhat curious and reasonable departure from the ordinary mode of procedure has been adopted. There a party who committed murder and was found to be insane was delivered over to private custody on caution to the amount of £200, to prevent him doing harm to himself or others.[1] The plea may be occasionally pleaded even in minor cases, where the position or rank of the individual who has committed the act, the quality of which is in question, is such as would suffer materially by incarceration in a prison. But in most criminal cases the defence is generally one of simple passive silence, or some assertion, when the prisoners are asked to say whether they are guilty or not guilty, that "they don't know anything about it." There is some reason in declining to raise this plea for the defence when the detention upon the ground of irresponsibility would be a more severe punishment than the reward for the crime on the ground of responsibility would amount to.[2] But this is no ground why the prosecution should not in all cases take cognizance of the insanity of an accused person, for the object of criminal jurisprudence is the protection of the lives and properties of the people, and not the apportioning a minor sentence to such as plead guilty of an offence which in the truest sense they did not actually commit. If any Judge advised the withdrawal of the plea in a case where an individual was being tried for a felonious assault, upon the ground that if the plea were admitted the accused would probably undergo a much longer imprisonment than if on conviction he received the legal punishment for the offence, which we can scarcely believe, it was certainly a very ill-considered recommendation.[3] What would be the result? Suppose that in this case the man was really mad and irresponsible for the offence for which he was

[1] Campbell, 18 November, 1830, s. (Inst.) 236. See also Douglas, 21 January, 1831, s. (Inst.) 236.

[2] Reg. *v.* Reynolds, Bodmin Summer Ass., 1843.

[3] This was the argument of the then Attorney General (now Lord Coleridge) in the trial of Arthur O'Conner, the boy who made an attempt to shoot at the Queen in 1872. There the insanity of the prisoner was set up as a defence, and Dr. Tuke gave evidence to the effect that it was of such a nature as to render him irresponsible. The Attorney General showed the jury that if the defence was successful, the punishment would really be more severe than if they returned a verdict of guilty. But this was really a matter with which the jury had nothing to do.

indicted, and for which the plea of insanity, being in accordance with the recommendation of the Judge, was withdrawn, he was sentenced to eighteen months' imprisonment.[1] He undergoes eighteen months' imprisonment. Such treatment is [178]calculated, according to the opinion of all those who are conversant with mental disease, to aggravate the insanity. He may possibly during his confinement assault a warder, and if the one punishment (the imprisonment) is useless, and that is the ground upon which all punishment of the insane is condemned, the punishment incurred by this breach of prison discipline is also useless. But everything that is useless is not harmless; indeed, we would rather say that everything that is not useful is harmful. So this second punishment, this punishment within a punishment, is highly detrimental, and when the individual has "done" his eighteen months, and goes out into the world, he is more insane than when he went into prison, and the law lets him loose upon society. If he makes another assault and kills some one, who is to blame? The law! The system of the raising of this plea is at present unsatisfactory.

§ 130. **Responsibility of Persons laboring under Mania.**—It is quite evident that in many cases of mania no question of responsibility can arise. If a maniac breaks a dozen windows, our anger is turned not against him, but against those who had the charge of him. We ask, "Why was he allowed to do it?" We know that the manifestation of our anger would have no effect upon the lunatic himself, and experience has taught us to regard all manifestations under such circumstances as useless and absurd. If a stone hurts us we at once direct our anger against the person who threw it, although the natural feeling is to resent the injury, and to vent the feelings of anger and resentment upon the proximate cause of the suffering. This is proved by the fact that children will kick the furniture. So our experience has taught us that it is utterly absurd to punish lunatics who are in a state of acute mania,[2] as the experience of men has convinced

[1] Taylor's Medical Jurisprudence, p. 1094.

[2] The maxim of the civilians as to this matter is, *Furiosus furioso solum punitur.*

them that it is stupid to be angry with a table which falls on their feet.[1] It is evident that the only difficulty which can arise with regard to questions of responsibility in relation to mania must be in connection with those cases in which the disease is only in one of the earlier stages, or where it is in one of its partial forms. It is also true that much difficulty has, in times [179] past, arisen in connection with moral mania. It is necessary, however, for the sake of convenience, to consider the medico-legal questions connected with each of these forms of disease separately. With regard, then, to general intellectual mania no question as to responsibility can arise.

§ 131. **English Law.**—We have seen that the test of irresponsibility, as laid down by Lord Lyndhurst, was, that to justify the acquittal of a person indicted for murder, on the ground of insanity, the jury must be satisfied that he was incapable of judging between right and wrong, and that at the time of committing the act he did not consider that it was an offence against the laws of God and nature.[2] Again, in Regina *v.* Oxford,[3] it was decided that if to an indictment for treason for attempting the life of the sovereign, by shooting at her Majesty, the defence is insanity, the question for the jury will be, whether the prisoner was laboring under that species of insanity which satisfies them that he was quite unaware of the nature, character, and consequences of the act he was committing, or, in other words, whether he

[1] The principles enunciated in the text were somewhat curiously illustrated in our presence not very long ago. We were dining with a medical man who has an asylum not far from London, for the reception of insane patients of the upper ranks. Towards the end of dinner, there were cries of alarm and fear, which penetrated to the dining-room, and at once attracted the quick ears and ready suspicions of those who know the dangers of lunacy practice. The medical men quickly left the room, followed by some of the guests. We found in a half-lit passage which communicated with the male department a man whose skull had been fractured by one of the patients, while the patient in question stood in the darkness of the room beyond with the axe with which he had inflicted the blow still in his hand. He was seized at once, and although evidently quite insane, it required some persuasion to induce those who held him to refrain from treating him with violence, and he was undressed and put to bed with a violence of language, at least, which was quite uncalled for. It requires a large and wise humanity to distinguish between responsibility and irresponsibility on such occasions.

[2] Reg. *v.* Offord, 5 Car. & P. 168.

[3] 9 Car. & P. 525.

was under the influence of a diseased mind, and was really unconscious, at the time he was committing the act, that it was a crime. In tracing the history of the principle which at present governs the rulings in all such cases, we come next to the Macnaghten case, already repeatedly alluded to, in which it was laid down that in all cases of this kind the jurors ought to be told that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary is proved to their satisfaction, and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that he was doing what was wrong.[1] Again, in Regina *v.* Higginson,[2] it was held that to entitle a person to be acquitted on the ground of insanity, he must, at the time of committing the offence, have been so insane that he did not know right from wrong. In a still more recent case, Baron Martin said that if the prisoner "knew what he was doing, and that it was likely to cause death, and was contrary to the law of God and man, and that the law directed that persons who did such acts should be punished, he is guilty of murder."[3] Again in Regina *v.* Davies,[4] it was decided that on an indictment for maliciously setting fire to a building, it is not necessary to prove actual ill will in the prisoner towards the owner, and in order to justify a jury in acquitting a prisoner on the ground of insanity, they must believe that he did not know right from wrong; but if they find that the prisoner, when he did the act, was in such a state of mind that he was not conscious that the effect of it would be to injure any other person, then this would amount to a general verdict of not guilty. Such then is the law of England, and it will appear from the cases which follow that a precisely similar rule has been adopted both in Scotland and in America.

[1] 10 C. & F. 200; 8 Scott N. R. 595; 1 Car. & K. 130.
[2] 1 Car. & K. 129.
[3] Reg. *v.* Townley, 3 Foster & F. 839.
[4] 1 Foster & F. 69.

§ 132. **Rule of Scotch Law with regard to Responsibility.**—In one of the most important cases which came before the High Court of Justiciary, the Lord Justice Clerk (Hope), after examining, commenting upon, and approving of the law as laid down in the answers of the Judges to the questions of the House of Lords, said: "A man must believe, not that crime is wrong in the abstract, (for most madmen do admit murder to be wrong and punishable in the abstract,) but that the particular act committed under the influence of the motive which seems to have prompted it was not an offence against the law," in order to exempt him from punishment.[1] In another case, it was said: "It was quite clear that if a man knew what act he was committing, and if he knew further the nature of that act and its consequences and effects, he was criminally answerable for it. But if, on the other hand, from the oppression of mental disease, he was unable to know what was the act he was committing, or, knowing it, if he was in such a condition from insane delusions as not to be able to understand the nature of the act, and to appreciate its consequences and effects, then he was in such a state of insanity that he was not answerable. But in order to constitute this insanity, it must be clearly made out that at the time of committing the act the prisoner was labouring under mental disease in the proper sense of the term, and that the mental disease was the cause of the act. Nothing but mental disease which overpowered the reason constituted insanity in the eye of the law."[2] Again, it has been laid down that if a person knows what he is doing—that is to say, if he knows the act he is committing, if he knows the true nature and quality of the act, and apprehends and appreciates its consequences and effects—that man is responsible for what he does.[3] Again, it has been said: "The question for your [the jury] consideration is, whether the party had any notion that the act was one of which the law would take cognizance, for that is the only test which a jury is at liberty to take.[4] We see, then, that there has been very

[1] The Lord Advocate *v.* Gibson, 2 Broun, 332.
[2] The Lord Advocate *v.* Brown, 5 Irvine, 215.
[3] Lord Advocate *v.* Milne, 4 Irvine, 301.
[4] Lord Advocate *v.* Yates, Arkley, 238. See also The Lord Advocate *v.* Smith &

great uniformity in the rulings of the Scotch Judges, and that these correspond very closely with the law as it has been laid down in England.

§ 133. **American Rule as to Responsibility.**—One of the cases in which the whole subject was discussed with greatest ability in America was that of Abner Rogers, junior, who was tried for the murder of the warden of the Massachusetts State Prison in 1844.[1] Shaw, C. J., in charging the jury, said: "In order that punishment may operate by way of example to deter others from committing criminal acts when under temptation to do so by presenting a strong counteracting motive, the person tempted must have memory and intelligence to know that the act he is about to commit is wrong, to remember and understand that if he commits the act he will be subject to the punishment, and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act and the immunity from punishment which he will secure by abstaining from it. A person, therefore, in order to be punishable by law, or in order that his punishment by law may operate as an example to deter others from committing criminal acts under like circumstances, must have sufficient memory, intelligence, reason, and will, to enable him to distinguish between right and wrong in regard to the particular act about to be done, to know and understand that it will be wrong, and that he will deserve punishment by committing it."[2] * * * "If, then, it is proved to the satisfaction of the jury that the mind of the accused was in a diseased and unsound state, the question will be whether the disease existed to so high a degree that for the time being it overwhelmed the reason, conscience, and judgment, and whether the prisoner, in committing the homicide, acted from an irresistible and uncontrollable impulse. If so, then the act was not the act of a voluntary agent, but the involuntary

Campbell, 2 Irvine, 1; Lord Advocate v. Blyth, Shaw, Justiciary, 567; Muray, 15 Nov. 1858, 3 Irvine, 263; Dingwall, 5 Irvine, 466; Lees, 2 Broun, 484.

[1] A careful and full report of this case was published by Messrs. Biglow and Bemis, counsel for the defendant, and it is from that admirable report that we have derived our knowledge of the case.

[2] Report, p. 275.

act of the body without the concurrence of a mind directing it."[1] This rule has been almost universally acted upon since that time.[2] In the case of The People *v.* McFarland, which was tried in New York during five weeks of the year 1870, and in which the accused was charged with murder, the presiding Judge, (the Hon. John K. Hackett,) in charging the jury, said: "In using the phrase 'state of sanity,' I am to be understood throughout as meaning thereby this, the state in which a man knows the act he is committing to be unlawful and morally wrong, and has sufficient reason to apply such knowledge and to be controlled by it. In using the phrase 'state of insanity,' I am to be understood throughout as meaning the state under which a man is not accountable for an alleged criminal act because he does *not* know that the act he *is* committing is unlawful and morally wrong, and has not reason sufficient to apply such knowledge and to be controlled by it."[3] "To constitute a crime, the accused must have been acted upon by motives and governed by will."[4] And again he charged: "In order, then, to constitute a crime, a man must have memory and intelligence to know that the act he is about to commit is wrong, to remember and understand that if he commits the act he will be subject to punishment, and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act and the immunity from punishment which he will secure by abstaining from it. If, on the other hand, he have not intelligence and capacity enough to have a criminal intent and purpose, and if his moral or intellectual powers are so deficient that he has not sufficient will, conscience, or controlling mental power, or if, through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for criminal

[1] Report, p. 277,

[2] See Freeman *v.* People, 4 Denio, 19; Com. *v.* Heath, 11 Gray, 303; Com. *v.* Mosler, 4 Penn. St. 267; State *v.* Spencer, 1 Zabriskie, 196; Vance *v.* Com., 2 Virg. C., 132; Com. *v.* Farkin, 3 Penn. L. J. 482.

[3] 8 Abb. (N. Y.) Pr., N. S. 57, 87; Report of Charge to Jury, printed at New York York in 1870, p. 5.

[4] Ib., p. 14.

acts."[1] Although there have been some decisions which would seem to throw doubt upon the view as presented above, we must hold that these are authoritative statements of the American law.

§ 134. **Rule of Law as applicable in cases of Mania.**— From all this, it follows that in cases of mania, where the insanity is general, affecting the whole field of the individual's thought and the whole range of his action, where it deprives him of all rational knowledge of what he is doing or saying, and of all appreciation of the immorality of the act, the individual is to be held exempt from punishment, and the only right the State has in reference to him, is to take such precautions as will prevent him doing the like mischief again. The rule of law as applied to questions of general intellectual mania is easily understood, and the question which is to be answered by the jury in such cases is by no means difficult The symptoms are so palpable, the mental confusion, instability, and incoherence are so great, the abrogation of reason is so apparent, that little practical doubt can be felt by any as to the irresponsibility of the person who is laboring under this disease. Still the fact has to be affirmatively made out. But the jury are entitled, in coming to their con-

[1] Report of charge, p. 12. There are other points in this charge which will have to be alluded to in another place. In the trial of Montgomery at Rochester, N. Y., (1871,) Darwin Smith, J., charged the jury that, "There is now no room for doubt as to the rule of law in this State, 'a man must have sufficient knowledge, reason, capacity, and mental power, to understand not merely that his act is a violation of law, but that it is intrinsically wrong.' Every human being endowed with reason knows that to take the life of a human being is against the law of nature and of God. It is not sufficient that he knows the thing is an offence against human laws, but he must have reason and capacity to know that he is not only violating the laws of man but the laws of God and nature." And in the case of Scannell, who was tried in April, 1873, Brady, J., said, "That insanity, considered in its legal aspect, may be stated thus: It means such a defect of reason as would render the prisoner unconscious of the nature and character and consequences of his act, and of its unlawfulness and immorality. A man is, by the law of this State, responsible for his acts when he knows what he is doing, is capable of distinguishing right from wrong, understands the consequences of his act, and that it is in violation of the laws of God and man. In other words, if the prisoner was in such a state of mind as to know that the deed was unlawful and morally wrong, he is responsible; otherwise not. If he was incapable of distinguishing between right and wrong, did not know that the act he was committing was unlawful and morally wrong, you cannot convict him of murder."

clusion as to the state of the prisoner's mind, to judge of his conduct during the trial, and upon that ground alone to find him insane, although no evidence has been given as to his state of mind at the time of the inquest.[1] But although no ground for hesitation can exist with reference to the irresponsibility of the maniac during an actual attack of the disease, some questions of nicety may arise as to whether he was or was not enjoying a remission of the malady at the time the act was committed, and as to whether the freedom from disease of such lucid interval would constitute legal responsibility or not. This question is, however, dealt with in another place.[2]

§ 135. **Partial Intellectual Mania in relation to Responsibility.**—Two of the answers of the Judges to the questions which were put to them after the trial of Macnaghten bore upon this subject. These answers have been quoted in another place, and all that will be necessary in this place will be the statement of the substance of these answers. When a man labors under a delusion, he believes it to be true. Now, a man acts upon what he believes, and not upon what is. A monomaniac would therefore be expected to act as if the untrue belief which is caused by his disease was a belief corresponding to actual fact. He is justified in doing so. If in doing so he commits a crime, he will by law be held to be in the same position as to punishment as a sane man acting as the insane man did, and situated as the insane man believed he was situated, would have been. In other words, a party laboring under delusion must be considered in the same relation as to responsibility as if the facts in respect of which the delusion exists were real. [179] With regard to partial intellectual mania, it seems to us reasonable that the insanity which does exist should relieve from responsibility only in case the act, which would otherwise bring the individual within the criminal law, is connected with the erroneous impressions which are traceable to disease. We have seen that for many purposes the monomaniac must be regarded as a sane man. We shall see hereafter that he must

[1] Reg. v. Goode, 7 Adol. & E. 536. [2] See Chap. XX., p. 537.

be allowed to exercise many of his privileges as a subject, and it is only reasonable to argue that he should be held responsible for many of his acts. A man who believes that he sees a decollated head is not thereby incapacitated from selling an estate, and if that man puts his hand into a neighbor's pocket and takes his handkerchief, there seems to be no reason why he should not suffer the penalty for larceny. Again, suppose a man to imagine that his own father was compassing his death, and if he believed that the only way to preserve his life was by knocking down his father, there is every reason why he should not be punished for assault; the prominent argument being that had any sane men been placed in the real position in which the monomaniac believed himself placed, he would have done exactly what the insane man did. Now the law would not have held the sane man guilty of assault, and as the maniac's beliefs are as real to him as the perceptions of the sane man are to him, it would be very unjust to punish him. That the connection between the insane delusion and the quasi-criminal act is almost invariably close and easily distinguished, makes the carrying out of this view, which has been urged as the correct one by Foderè and Hoffbauer, exceedingly easy.

§ 136. **Objections to this Rule considered.**—Many medical jurists have, however, argued that it is not by any means easy to trace the connection between any idea and any act in a sane mind, and that the difficulty is infinitely increased when the mind is diseased. Georget has said: "In conversing with patients on topics foreign to their morbid delusions, you will generally find no difference between them and other people. They not only deal in common-place notions, but are capable of appreciating new facts and trains of reasoning. Still [180]more, they retain their sense of good and evil, right and wrong, and of social usages to such a degree, that whenever they forget their moral sufferings and delusions they conduct themselves in their meetings as they otherwise would have done, inquiring with interest for one another's health, and maintaining the ordinary observance of society. They have special reasons even for regarding themselves with a degree of complacency; for the most part, they believe that

they are victims of arbitrary measures, fraudulent contrivances, and projects of vengeance or cupidity, and thus they sympathize with one another in their common misfortunes. Accordingly, the inmates of lunatic asylums are rarely known to commit those reprehensible acts which are regarded as crimes when dictated by sound mind, though the most of them enjoy considerable freedom. They often talk very sensibly of their interests, and some even manage their property perfectly well.

"Those patients who are insane on one point only, more or less limited, may have experienced some severe moral disorders which influence the conduct and actions of the individual without materially impairing his judgment. Those who conduct themselves so well in the asylum in the midst of strangers with whom they have no relations, and against whom they have conceived no prejudice nor cause of complaint, and in quiet submission to the rule of the house, are no sooner at liberty in the bosom of their families than their conduct becomes insupportable: they are irritated by the slightest contradiction, abusing and threatening those who addressed the slightest observation to them, and working themselves up to the most intolerable excesses. And whether the reprehensible acts they commit are really foreign to the predominant idea or not, ought we to make a being responsible for them whose *moral* nature is so deeply affected?"[1] From this statement of what he considers to be facts, he infers that it would be unjust to punish the monomaniac for his criminal acts, while it is just to *allow him* to retain his civil ability. Now in some respects the statement is not correct, and in every respect the inference is erroneous. The statement that lunatics in an asylum sympathize with each other on account of the consciousness of common misfortunes is not borne out by our own experience or by that of some of those whom we have consulted and who have had the amplest means of verification or refutation. With [181]regard, then, to the inference he draws, is it not evident that it is the discipline of the asylum that produces the effects he describes, and that it is the laxity of home or the houses of friends or

[1] Discussion Medico-légal sur la Folie, p. 10.

relatives that leads the insane to those annoying excesses of which he speaks. The best child can be spoiled. "It's own way" is bad for a child or a lunatic, and yet Georget proposes to remove these very persons from the operation of that large system of discipline in a country which is called the criminal law, after proving their liability to be influenced by motives. This is surely a peculiar mode of procedure. In opposition to these views, we would point out that the possibility of influencing motives is the ground or meaning of punishment, and that wherever the threat of punishment might have, but has not, influenced the conduct of an individual, there on every ground of law and justice is punishment due. The objection that it is certain, as has already been admitted, that a monomaniac is not as good a man as he was before the occurrence of the disease, that his mental force is not so great, and that therefore, even although the act is not connected with the prominent delusion, he is still less capable than he was in times past to judge of the relative value of motives, and the reasons for refraining from his act, has occurred to us and has been considered by us. The assertion is evidently true, but if the law was to consider the relative power of different individuals to judge of motives, no such thing as justice could ever be done. A grocer who made up his mind to sell *exactly* a pound of sugar would never succeed in doing it, and his first mercantile transaction would occupy him a whole lifetime, and even then his efforts would not be crowned with success. It is well for those who would get through the world at all comfortably to be content with what *will do*. The absolute is a will-o'-the-wisp: so it is with laws—we must be content with what is "enough." Any laws which laid down an absolutely just code of enactments, containing punishments to be awarded in all cases according to the actual moral responsibility of the individual, would be much too good for earth. We must be content with a law which will punish a Shakespeare or a Milton if he commits a crime, very much as if he were a chaw-bacon.

§ 137. **Other Objections discussed.**—Perhaps it is in relation to this question of delusion and its effect upon the responsibility of the patient that the most fierce war has

been waged, and in connection with the legal principles applied to this question that lawyers have been served with the greatest amount of cheap vituperation at the hands of medical men. The objections which are urged against it have no intrinsic weight, but owing to the persistency with which they are pushed forward, have acquired a considerable amount of momentum. They consequently demand consideration. We have stated the law with regard to erroneous beliefs. We have seen [182] that when a person under an insane delusion as to existing facts commits an offence, in consequence of such delusion, he shall be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. It has been objected to this principle that it is based on the notion that insane persons reason correctly from wrong premises, and that this conception is erroneous.[1] But it is not so: it is founded on a belief that insane persons who labor under monomania are capable of reasoning in every way like sane men upon all the subjects which are unconnected with their delusion. And that this fact can be proved by a hundred examples is beyond a doubt. Now, this doctrine takes for granted the possibility of these individuals being influenced by the fear of punishment or the hope of immunity. And this being the case, all the elements are present which constitute legal responsibility for criminal acts.

§ 138. **Inadequacy of Motive not a Proof of Insanity.**— Another objection has been urged against this theory of the responsibility of the insane. It is argued that if a man kills his neighbor because he believes that his neighbor spat in his face, or insulted him, and although the fact of the delusion is admitted, the man suffers punishment because he would not have been justified in killing the neigbor if the injury actually had been done, that that is unjust. The reason given for this opinion is that the utter want of proportion which exists between the insult and the retribution is itself indicative of the insanity of the act. But it is surely impossible for law to admit such an excuse. *Ex hypo-*

[1] See Kraft-Ebing, Vierteljahrschrift f. Gericht Med. XIII. 1.

thesi, the man is monomaniac. If general moral mania could be proved, the question would have to be argued on other principles. But in this case the man is admitted to be a monomaniac; to have a prejudice in the flesh. He believes he has been insulted, and he kills the man he imagines offered him the rudeness. Now, the belief is insane by admission; but there is surely nothing insane in the want of proportion between an offence and its resentment. The mere fact of such a disproportion cannot be admitted as an indication of the insane character of the act. Were it so, we would invariably find the provocation infinitesimal in all cases of crime. But the smallness of the motive in relation to the gravity of the act proves nothing but a carelessness of consequences, or an expectation of immunity from punishment. We have seen tyrants take off their subjects' heads for reasons which to us seem insignificant, and only upon account of the impossibility of their [183] being called to account. And we have seen many men who were undoubtedly of sound mind commit crimes after real injuries, when the disproportion was quite as startling as that in the supposititious case alluded to above. There can be no reason for admitting such an argument as in the least degree relevant. If there is an insane impulse besides the delusion, then there might be some reason for admitting irresponsibility, but in a case of simple monomania, such an exculpatory plea is not to be thought of for a moment. Those who would have us believe in such a doctrine are either stupid, or would try to win an admission by means of that mental legerdemain, a shifting premise.

§ 139. **Apparent Diversity in Criminal Courts as to Admission of this Plea.**—It has been argued that there is an inference as to the unsatisfactory nature of this rule of law from the diversity which is said to have characterized the practice of the Courts. But there always is much diversity in the practice of criminal Courts. We have ourselves seen a man sentenced to ten years' penal servitude for stealing a few lozenges, and we have seen a man, for setting fire to two haystacks out of ill will to the owner, sentenced to five years' penal servitude. And to any one who did not know that in

the former case the prisoner was an old offender, and had been in prison twenty times before, such punishments would seem disproportioned to the gravity of the offence, and that disproportion would be an ample text for a sensational article. All these cases require to be inquired into, and, to our thinking, if the law on this subject is carefully studied, it will present a very considerable amount of sound and rational uniformity. It seems to us, after a somewhat careful examination of this subject, that definite principles, be they right or wrong, which do exist in relation to questions of responsibility, have guided the decisions in these cases, as much as the principles in connection with any other technical matters have guided the discussions in respect of those. After all, our institution of trial by jury is not perfect. Many errors are incident to all human tribunals. But we find that many of the errors which courts of law may have committed are in the main due to the very defective condition of the knowledge of medical men concerning insanity, and the very inefficient way in which they have frequently given their evidence in courts of law. It may be well to consider some of these decisions.[1]

§ 140. **Cases in which Delusion has been set up as a Defence.**—In one of the cases in which this defence was set up, Wightman, J., stated the law thus: "The delusions which indicate a defect of sanity such as will relieve a person from criminal responsibility, are delusions of the senses, or such as relate to facts or objects, not mere wrong notions or impressions, or of a moral nature, and the aberration must be mental not moral to affect the intellect of the individual. It is not enough that they show a diseased or depraved state of mind, or an aberration of the moral feelings, the sense of right and wrong, although it may be perverted, being still not destroyed; and the theory of a moral insanity, or insanity of the moral feelings, while the sense of right and wrong still remains, is not to be reconciled with the legal doctrine on the subject."[2] We shall hereafter consider the subject of moral insanity. Our object in this place is to set forth fully the

[1] See Macnaghten's Case, 10 Clark & F. 200, 1 C. & K. 130.
[2] R. *v.* Burton, 3 F. & F. 772.

various judicial opinions which have been expressed on the legal responsibility of those who are only partially insane. In the Townley case, Martin, B., laid down the principle, that where upon a trial for murder the plea of insanity is set up, the question for the jury is, Did the prisoner do the act under a delusion, believing it to be other than it was? If he knew what he was doing, and that it was likely to cause death, and was contrary to the law of God and man, and that the law directed that persons who did such acts should be punished, he is guilty of murder.[1] Some cases have come before the Courts in the northern half of this kingdom which throw light upon this point. On the 30th and 31st May, 1864, George Bryce was tried at the High Court of Justiciary in Edinburgh for the murder of a woman named Jeanie Seaton. It appeared from the evidence, that the prisoner labored under the delusion that the deceased had spoken of him as a drunken blackguard. Professor Laycock was examined, and expressed his opinion that the prisoner was insane. In charging the jury, the Lord Justice General said, "There are kinds of delusions which are not evidence of insanity," and instanced mistaken beliefs. He then went on to consider what character of delusions would exculpate, and instanced a delusion which made a criminal act in self-defence. In alluding to the theory which had been set up that the prisoner's forgetfulness of the act he had committed was one of the strongest proofs of the insane character of that act, he pointed out that the supposed forgetfulness was negatived by the evidence of the prisoner's conduct, and he said: "The question for you to decide is, Has it been established or has it not, that this act was perpetrated through insanity—insanity in this sense, that the party was bereft of mind, and that he believed, from grounds that acted upon his imagination, that facts had occurred which warranted him in committing violence against the individual?" The jury found the prisoner guilty, but recommended him to mercy, on the ground of his low mental organization.[2] Again, where the panel was charged with stabbing and cutting a police officer

[1] Reg. v. Townley, 3 Foster & F. 839. See Levitt's Case, Cro. Car. 538.
[2] Bryce, 4 Irvine, (Justiciary,) 506.

who had taken him into custody, it appeared that the prisoner had been riotous in the streets, that he was going about in a wild way and in a very bad plight, and that he entertained a delusion that he was the lawful son of the Duke and Duchess of York. The jury were directed to make up their mind whether the delusion led to the crime, and they found the panel guilty as libeled.[1] We cannot say that we agree wholly with the opinion expressed in another case by a Scotch Judge, who said that there was "no such thing admitted in law as partial insanity—give it whatever name you choose, monomania or any thing else. As was well said by Lord Brougham, 'That being or object which is called mind, if unsound in one point is unsound in every respect, so long as that which causes the unsoundness exists in the mind.'" * * * The learned Judge added: "The panel must be shown to be unable, by the visitation of God, to do what his duty to God requires, to struggle and overcome his passions, which every man possessed of reason may."[2] Shaw, C. J., in the case of The Commonwealth *v.* Rogers,[3] to which we have already had occasion to refer, says: "Monomania may operate as an excuse for a criminal act" when "the delusion is such that the person under its influence has a real and firm belief of some fact not true in itself, but which, if it were true, would excuse his act, as where the belief is that the party killed had an immediate design upon his life, and under that belief the insane man kills in supposed self-defence. A common instance is where he fully believes that the act he is doing is done by the immediate command of God, and he acts under the delusive but sincere belief that what he is doing is by the command of a superior Power, which supersedes all human laws and the laws of nature." In another case,[4] a nice but admirable distinction was drawn between delusions which compel the act, and delusions which are connected with the subject of the act, but are really beside it, and are used as a pretext, and are not using the individual. There the jury were charged that if a person otherwise rational commit a

[1] Whelps, 1 Broun, 378.
[2] Smith & Campbell, 2 Irvine, 1.
[3] Report by Biglow & Bemis, p. 277. See also U. S. *v.* Holmes, 1 Clifford, 98.
[4] State *v.* Windsor, 5 Harris, 512.

homicide, though affected with delusions on subjects with which the act is connected, he is criminally responsible if he were capable of the perception or consciousness of right and wrong as applied to the act, and had the ability, through that consciousness, to choose by an effort of the will whether he would do the deed.

§ 141. **The real difficulty in Cases of Monomania.**— Although the principles of the law as enunciated by various Judges are perfectly clear, the real difficulty arises in connection with the question whether such a disease as monomania exists, and if that be decided in the affirmative, then in deciding when a person who manifests delusions is laboring under this disease and is not otherwise insane; for it must be remembered that delusions may be the early symptoms of wide-spread and general mental disorder. It is also to be borne in mind that in many cases there is real difficulty in discovering whether an admitted delusion has or has not influenced the act, the character of which is in question. One point may be separately noted in this place, although it seems to us to be contained in the answers of the Judges, and it is this, that any delusion which deprives a person of the power of judging either of the actual state of facts, or of the power of judging of the appropriate conduct in regard to real circumstances, would be a good defence. A case put by Lord Erskine will illustrate this point. "Let me suppose," he said, "the character of an insane delusion consisted in the belief that some given person was any brute animal, or an inanimate being, (and such cases have existed,) and that, upon the trial of such a lunatic for murder, you, being on your oaths, were convinced, upon the uncontradicted evidence of one hundred persons, that he believed the man he had destroyed to have been a potter's vessel, that it was quite impossible to doubt that fact, although to other intents and purposes he was sane, answering, reasoning, acting as men not in any manner tainted with insanity, converse and reason and conduct themselves. Suppose, further, that he believed the man whom he destroyed as a potter's vessel to be the property of another, and that he had malice against such supposed person, and that he meant to injure him, knowing

the act he was doing to be malicious and injurious, and that, in short, he had full knowledge of all principles of good and evil; yet would it be possible to convict such a person of murder, if, from the influence of the disease, he was ignorant of the relation in which he stood to the man he destroyed, and was utterly unconscious that he had struck at the life of a human being?"[1] And to this question one may answer, certainly not. Under the present law, such an individual would be regarded as irresponsible, and would suffer no punishment on account of the act. If there was any remedy in such a case, it would be one which was applicable to the set of circumstance which the lunatic supposed real, viz., the breaking a potter's vessel with the intention of giving pain to a person against whom he had an ill will. With regard to the question of the existence of such a disease as monomania, we need say nothing here. We have already considered the question, and will again have to say something in reference to it. As to the discovery of when the delusion exists alone and is not associated with other and wider mental disease, our description of the symptoms will be a sufficient guide to enable any person of even limited experience to distinguish this form of mental disease from others. One case which shows that courts of law do not make mistakes as to this matter may be referred to. A woman named Blyth was tried at Perth on the 29th April, 1852, for the murder of her mother. It appeared that the prisoner had been for some time hypochondriacal, had consulted a medical man, and gone to bed on account of diseases she only supposed herself to labor under. The medical man deposed to the fact that she believed her nose was coming off, and that her hands were turning black. These were the only symptoms of insanity which had manifested themselves previous to the time of the criminal act. The act itself was somewhat indicative of insanity. Without any quarrel, she attacked her mother with the tongs, and repeatedly struck her on the head, and caused such severe injuries that the old woman died in a very few days. After the act, the prisoner, in speaking of her mother, had said that it was time she was dead. Yet

[1] Winslow on the Plea of Insanity in Criminal Cases, 6.

upon this evidence the jury, being guided to the conclusion, were of opinion that the prisoner was so insane as to be irresponsible for the crime with which she was charged, and regarded the delusions not as constituting the real symptoms of the disease, but as indicating the existence of grave and increasing organic mischief and mental disease.[1] Sufficient then has, it seems to us, been said to show the satisfactory nature of the rule of law as it bears upon cases of monomania; and what has been already stated will serve to illustrate the principles and to show in what class of cases this plea is likely to be successful, where care is necessary in the discovery of the local or general character of the disease, and what precautions it will be well to take in all such cases. We propose in the next place to consider the testamentary capacity of those persons who are laboring under mania.

§ 142. **Mania and Testamentary Capacity.**—To be enabled to make a will, a man must be of sound mind, memory, and understanding. "In one sense," Sir James Hannen remarked, "the first phrase, 'sound mind,' covers the whole subject, but emphasis is laid upon two particular functions of the mind which must be sound in order to create capacity for the making of a will, for there must be memory to recall the several persons who may be supposed to be in such a position as to become the fitting objects of the testator's bounty: above all, there must be understanding to comprehend their relations to himself and their claims upon him."[2] There cannot be much doubt that this is a correct exposition of the law with regard to wills. It has been enunciated over and over again in very many different phrases, but it was always the same thing although differently clothed. The real difficulty in this, as in all other cases, is to decide upon the degree of sound mindedness which will entitle a person to make a will. With regard to the disease here alluded to, no question is likely to arise: the description which has been given in the preceding chapter of mania would convince those who have not had opportunities of observing the disease, that there is little likelihood of a

[1] Shaw, 567.
[2] Boughton *v.* Knight, 42 L. J,, p. 25.

person who is affected with this disease making a testamentary instrument, and that even if in his wild eccentricity he should attempt to do so, there could be little difficulty felt in deciding that he was not of sound mind, that his memory was treacherous, and that his judgment was dethroned. Instead of one word sounding of folly, there would be whole movements in the key.[1]

§ 143. **Degree of Capacity required to Make a Will.**— Without entering upon the argument to which we have alluded, as to whether it requires more mind to enter into contract or to make a will, which might be debated many times without having a satisfactory conclusion for result, we may point out that it does not require any very great amount of capacity to make a will. Every man is supposed to be able to leave his property to whom he likes by such an instrument;[2] and it is only by proof that he is incapable of doing so with a clear understanding of the effect of the instrument, and with a desire that it should operate in that way, that he is deprived of this power, or that, if an instrument is set up which pretends to have been the product of such a state of mind, it is, on proof of the reverse, pronounced invalid. We may again quote the words of Cockburn, C. J., with reference to this matter. He said: "It may be here not unimportant to advert to the law relating to unsoundness of mind arising from another cause—namely, from want of intelligence occasioned by defective organization, or by supervening physical infirmity, or the decay of advancing age, as distinguished from mental derangement, such defect of intelligence being equally a cause of incapacity. In those, it is admitted on all hands that though the mental power may be reduced below the ordinary standard, yet if there be sufficient intelligence to understand and appreciate the testamentary act in its different bearings, the power to make a will remains."[3] This doctrine, like that last

[1] See 34 and 35 Henry VIII., c. 5, § 14; Swinb. on Wills, by Powell, vol. 1, p. 119; Evans *v.* Knight, 3 Hagg. 598.

[2] Sutton *v.* Sadler, 3 C. B., N. S. 87; 26 L. J., C. P. 284. See also Symes *v.* Green, 1 S. & T. 401; Evans *v.* Knight, 3 Hagg. 598.

[3] Banks *v.* Goodfellow, 5 L. R., Q. B. 546, at p. 567.

alluded to, is established law, and is acted upon universally in England, in Scotland, and in America.

§ 144. **Difficulties of Proof.**—The rule of law is simple and, as it seems to us, excellent, but the difficulty is to get reliable testimony on the point. In will cases, more than in others, the testimony of witnesses is unsatisfactory and unreliable. This may be accounted for by the fact that all questions as to whether the testator understood what he was doing, whether he recognized certain persons and knew that they were related to him, and the like, can be answered only from opinion. Again, the facts inquired into may have occurred a considerable time before; and when one expresses an opinion as to the mental condition of a dead man, one can be contradicted only by other opinions which may be as worthless, and not by the fact of a living man acting in such a way as to belie one's testimony. However it arises, there can be no doubt of the fact. "One person," said Sir John Nicholl, "seeing a testator in extreme age or under extreme sickness, thinks that if he knows those about him, and can answer an ordinary question with respect to the state of his illness, or his wants, such and similar matters render him capable of giving effect to a disposition by will, however complicated it may be, by the mere formal execution of the instrument; while another person may be of opinion, that though a testator, in the ordinary management of his affairs, can hold reasonable conversation, can fully comprehend all the usual and simple transactions of life, yet, if he is unable to take the active management of all his concerns, however complicated those concerns may be, or if he is liable to become confused by entering into intricate transactions, he is totally incapable, and cannot enter into a testamentary disposition, however plain and simple. Now, where opinions are formed by such different standards, it is obvious much variety must take place."[1] And the same Judge observed that "experience in the ecclesiastical court teaches us, that evidence upon questions of capacity is almost always contradictory, such evidence being commonly that of opinion merely; and this con-

[1] Kinleside v. Harrison, 2 Phillim. 456, 457.

trariety proceeds from the obvious grounds, that of the witnesses no two possibly have seen the party whose estate is deposed to under precisely the same circumstances, and that each again of the several witnesses, no matter how numerous, measures possibly testamentary capacity by his own particular standard. These sources of discrepancy, and many more might be enumerated, are common to all cases of this description. There is an additional source, where the transaction of which they have to speak is remote, a circumstance sufficient in itself to account for no inconsiderable degree of contrariety of evidence, even where the witnesses have to speak to facts merely, and not of opinions formed and inferences built upon facts, of which most of the evidence furnished upon questions of capacity is commonly made up. If the Court, therefore, on questions of capacity, is accustomed to rely but little upon such evidence so far as it is that of mere opinion, but to form its own judgment from the facts and the conduct of the parties at the time, it becomes it to do so more peculiarly when much of the evidence not merely consists of opinions, delivered long subsequently to the transactions which they profess to have suggested them—upon loose recollections, too, and, in some instances, after repeated discussions of the subject-matter with interested parties."[1]

§ 145. **Testamentary Capacity and Monomania.**—Here as in other places, and here more particularly, we must note the influence of delusions upon the capacity to make wills. It is an important inquiry how far a man is incapacitated by the fact that he labors under an erroneous belief and that that erroneous belief is produced by the bad logic of disease. We must consider this question at some length and with the help of all the cases which have come before our Courts.

§ 146. **Insanity in Sane Men.**—It is not uncommon to find beliefs which must in accuracy be termed delusions, in the minds of persons who are undoubtedly sane. Indeed, as we have over and over again remarked, the line between these two conditions cannot be drawn, and it would seem that it is

[1] Shelford on the Law concerning Lunatics, 2d ed. p. 277. See Evans *v.* Knight, 1 Add. 229, 240; Williams *v.* Goude, 1 Hagg. 589–591.

only when a man is more mad than sane that we call him a lunatic, and when he is more sane than mad, we call him a man of sense and sanity. For just as we find insanity in sane men, so you find sanity in insane men. Every man is an image made like that in the apocalypse of iron and clay. The difficulty is to tell which is which, and the proportion of each in the man. Nothing is more common than to find persons who are undoubtedly insane managing their own affairs with much practical ability. We have seen that individuals laboring under general intellectual mania are not utterly incapable of doing certain duties, and we have also seen that many persons who were, so to speak, remarkable for sanity, have yet suffered from illusions of the senses, as Pascal or Swedenborg, or have been conscious of delusions, as Goëthe, Luther, or Ben Jonson. Mr. Wharton has collected some interesting instances of what we have called the insanity of sane men. "Lord Kenyon," he says, "could never overcome his fear of poverty and his nervous dread af spending even a farthing except for necessaries. Of Lord Stowell, even after he had accumulated an enormous fortune, Sir Henry Holland, who attended him as physician, writes: 'Lord Alvanleif's description of him as a conceited Muscovy duck had an amazing personal reality about it, felt even by those who know his high merits as a judge and master of international law. His house curiously illustrated the habits of the man, in its utter destitution of all the appliances of luxury and of comfort. The furniture was never either changed or cleaned. Year after year I wrote prescriptions there with the same solitary pen—the single one, I believe, in his possession, and rarely used by himself after his retirement from public business.' Of Lord Erskine, Sir Henry Holland tells us that 'his mind too, when I knew him, was clouded by little foibles and superstitions. I can recollect a dinner at Sir S. Romilly's where his agitation was curiously shown in his reluctance to sit down as one of thirteen at table, and by the relief he expressed when the fourteenth guest came in.' Lord Eldon laboured under the delusion that even after he had really made up his mind and had so expressed himself lucidly and clearly, there was still ground for him to doubt, and this habit was the cause of great delay to suitors and of

great distress to himself. Lord Campbell tells us that Lord Lyndhurst was governed by delusions of *physical* and Lord Brougham by those of *intellectual* vanity, and more than once in Lord Brougham's life was 'his mind clearly off its balance,' and so wild and violent were at times its perturbations that it was considered necessary to place him in seclusion. Among American Judges, analogous illustrations may be found. Judge Brackenridge of Pennsylvania is reported to have, on a very hot day when holding court at Sunbury, gradually taken off his clothes till at last he was naked. Judge Baldwin, of the Supreme Court of the United States, was a hypochondriac. A distinguished New England Judge, it is said, imagined that a dropsical affection under which he laboured was a sort of pregnancy."[1] All these were to our thinking instances of insanity in sane men.

§ 147. **Sanity in Insane Men.**—We have already spoken at some length with reference to the existence of monomania, and it only remains for us to remark that [185] there are many people who are only insane in so far as one series of beliefs are concerned. They may not otherwise have the peculiarly strong minds that were in those men we mention, and owing to that circumstance they may, with the same or similar delusion, be madder than any one of these men were. Just as the same disease is a very different thing to two men, one having a bad and the other a good constitution. But still, even those persons who may be classified as monomaniacs, and distinguished from those persons who have illusions which they know to be illusions, or illusions in a healthy mind, are in many respects quite capable of doing all their duties as citizens, and of conducting their own affairs. Suppose a man has a delusion connected with the sense of hearing. Suppose he imagines he hears the rustling of a silk dress—and men of the highest culture may be affected in this way—is it to be argued for a moment that such an individual is thus incapacitated from any of the acts of civil ownership, while many of the peasantry, who are unable to read or write, believing in the most degrading superstitions, such as that

[1] Wharton's Mental Unsoundness and Psychological Law, § 140.

the wells are poisoned during epidemics and the like, are to be allowed in every way to exercise those rights to which they are entitled as members of a civil community? Any such theory is untenable. A much more rational principle is that insanity only invalidates a civil act when such comes within the range of the mental impressions which are due to disease.

§ 148. **Delusion Defined.**—It is well that the reader should understand what a delusion really is. Many attempts have been made to define it, and for all practical purposes it is easy enough to understand from these what a delusion is in the eye of the law, although some are open to grave logical objections. Thus Sir John Nicholl, in the case of Dow *v.* Clark, said: "One of the counsel accurately expressed it: it is only the belief of facts which no rational person would have believed;" and again in the same case he said: "Where there is a delusion of the mind there is insanity; that is, where persons believe things to exist which exist only, or at least in degree exist only, in their own imagination, and of the non-existence of which neither argument nor proof can convince them, they are of unsound mind."[1] Again, Lord Brougham defined it as "the belief of things as realities which exist only in the imagination of the patient."[2] Shelford, too, defines delusion as "the fancying things to exist which can have no existence, and are impossible according to the nature of things, as that trees will walk, or statues nod, and which fancy no proof or reasoning will convince."[3]

§ 149. **Testamentary Capacity in relation to Delusion.**—There has been very considerable difference of opinion upon one point connected with this important subject, although we must now regard it as definitely settled that insanity or delusion which was unconnected with the objects of testamentary disposition and which did not actually affect that instrument will not invalidate it. A different opinion has been expressed by some most able Judges, and

[1] 3 Addams, 79; and see Hagg.'s Report.

[2] Waring *v.* Wariug, 6 Moore Pl. 349.

[3] Shelford's Law concerning Lunatics, 2d ed., p. 293. See also Stanton *v.* Wetherax, 16 Barb. 259, and American Journal of Insanity, April, 1865, p. 575.

it is necessary to consider these opinions, and to see that no conclusion adverse to them is arrived at without care. [186]The case of Dew *v.* Clark[1] is interesting in connection with this subject. The will of a person who had left personal property amounting to £40,000, was called in question on the ground that the testator (Scott) was insane. The plaintiff was the testator's own daughter, to whom only a life interest in a small sum had been bequeathed, while the bulk of the property had been left to his nephews. It was proved that the testator had manifested a morbid dislike and aversion to his daughter. He used to descant upon her vices, her sullen, perverse, and obstinate disposition, and accuse her of faults of which she could not possibly be guilty. His conduct towards her was proved to be inhuman; and it was satisfactorily shown that there was no real cause for all this unnatural feeling, but that, on the contrary, instead of being one of the worst of women, as his insane mood depicted her, she was in fact one of the most exemplary, kind, affectionate, and good. The Court, therefore, in delivering its judgment, said, that the issue was not "whether the deceased's insanity in certain other particulars, as proved by the daughter, should have the effect of defeating a will generally of the deceased, or even this identical will, but whether his insanity on the subject of his daughter should have the effect of defeating, not so much *any* will (a will generally) of the deceased, as this identical will." And as it was held to be proved that this identical will was the direct result of the morbid delusions which were shown to have existed, it was set aside. The learned Judge concluded his observation on the case as follows: "The deceased's state of mind at the time of making his will is intimately, I think, connected with his state of mind on the subject-matter of his will, understanding by this the disposal by will of his property. If the deceased were at all times of unsound mind on the subject-matter of his will, he must have been of unsound mind at the time of making his will. To suppose the contrary would be to suppose the deceased both sane and insane at the same time and on the same subject; a supposition, I apprehend,

[1] 3 Addams, 79, 205.

equally absurd in a legal and moral point of view. And, subject to these considerations, the question in the end to be determined—the point at final issue—is not whether the deceased's insanity in certain other particulars, as proved by the daughter, should have the effect of defeating a will generally, or even this identical will, but it is whether his insanity on the subject of his daughter, as also proved by the daughter, should have the effect of defeating, not so much any will (a will generally) of the deceased, as this identical will; and to the decision of that question I am to be understood as solely addressing myself in the following observations: Now, the daughter being in this case the sole next of kin, the deceased's only child, it is quite impossible, I think, to disconnect the daughter from the subject-matter of his will—that is, of his property: they are subjects, in effect, identified. Hence, the deceased's insanity on the subject of his daughter, generally speaking, being proved at all times in my judgment, it follows that his insanity, at the time of making his will, is also proved in my judgment, unless the contrary is to be inferred from the will itself. But the inference furnished by the will itself (and it is for this only that I refer to the dispositive part, to the contents of the will at all,) is quite the other way. For the prominent feature of the deceased's insanity, in respect to the daughter, was aversion or antipathy to the daughter, so pleaded and so proved; and the will is a will plainly inofficious so far as regards the daughter, being a will by which she is, in effect, disinherited—disinherited, too, in favour of parties nearly utter strangers to the deceased, (for so it appears,) though not remotely connected with him by blood, being his sister's children. Therefore, it follows that in my judgment the deceased is proved upon the whole matter to have been insane at the time of making this will: which was the daughter's case. * * * Had the contents of the will furnished a contrary inference—had the will, so far as respects the daughter, been in all parts of it an officious will, the conclusion on this head, and so upon the whole case, might have been different: the very contents of the will would in that case have inferred that, however partially insane (insane on the subject of his daughter) the deceased might have been generally speaking,

still, that such partial insanity was not in actual operation at the time of his making the will; in which respect the will might have been valid."[1]

It is then, it seems to us, [187]to be admitted that when, as in the case of Dew *v.* Clark,[2] an individual labors under a delusion which is likely to influence the testamentary disposition, such a state of mind should be held fatal to the instrument. Thus, in the case of Greenwood *v.* Greenwood,[3] it was proved that the testator having during an illnesss received a draught from the hand of his brother, he continued to believe, even after the delirium had passed away, that his brother had administered poison with the view of destroying him. This insane belief led to the execution of the will, which was disputed, and by means of which instrument the brother alluded to was disinherited. This is by no means an uncommon form of insanity. Monomaniacs frequently believe that they are persecuted, and any such act as the administration of medicine, which is generally the duty of some near relation, will become connected with their morbid beliefs, and may lead to the execution of a will excluding those persons from the enjoyment of right and property, who would, had the testator been of sound mind, have been the first objects of his bounty. In such cases, the rule which applies to construction of wills with respect to the testator's intention should be had regard to, and that intention should be evidenced by acts done, and words spoken, before the delusion that influenced the disposition appeared. This rule is at the foundation of the principles of law with regard to the validity of wills and to the succession of property. Such rules must, if they are to be good, be founded upon ordinary feelings of human nature. But the question which naturally arises is, whether a delusion, which can have had no influence upon the testamentary disposition, should be held to deprive the individual laboring under it of the capacity of making a will. This is evidently a question of the utmost importance.

[1] See 5 Russ. Ch. Cas. 163.

[2] 3 Add. 79, and Haggard's Rep. of Judgment. See also Fulleck *v.* Allinson, 3 Hagg. 527–547; Billinghurst *v.* Vickers, 1 Phillim. 191–198; and see Wood *v.* Wood, 1 Phillim. 357.

[3] 3 Curteis' App. xxx.

In the case of Waring *v.* Waring,[1] however, a very different doctrine was laid down by the Privy Council. There it was held that the proved existence of partial insanity or monomania was fatal to the validity of a will made by the person thus affected, even although the delusion might be unconnected in any way with the testamentary act or with the objects of the will. It is true that the Court went out of its way to give this decision. In the case the question of monomania was not really raised. It appeared that the testatrix, who was old at the time the will was executed, was exceedingly penurious and eccentric; that she was easily excited to anger, and was in the habit of quarrelling with her servants; that on occasion she gave way to erotic ideas and indulged in obscene conversation. She believed that Lord Melbourne and Lord John Russell prowled about her house disguised as fishwomen, attracted thither by her charms and a desire to enjoy them. She, as it was also proved, harbored the delusion that the brother whom she disinherited had joined the Catholics, and was also in the habit of coming about her house *incognito*. Here there could be no doubt about the general character of her insanity, and her general incapacity to dispose of her property by will. It would have been absurd to say that she was laboring under monomania. Yet the Court, by Lord Brougham, who delivered the judgment, said that "the question being whether the will was duly made by a person of sound mind or not, our inquiry, of course, is, whether or not the party possessed his faculties, and possessed them in a healthful state." * * * Again, he remarked that because the mind was one and indivisible "we therefore cannot in any correctness of language speak of general or partial insanity." And after further discussion, he said: "It follows, from thence, that no confidence can be placed in the acts or in any act of a diseased mind, however apparently rational that act may be, or may in reality be." And the result of his long and elaborate judgment was that the mind must be sound throughout in order to entitle a man to exercise his power of will-making. In the more recent case of Smith *v.* Tebbitt,[1] the same rule was followed by Lord Pen-

[1] 6 Moore P. C. C. 341. [1] 1 L. R. Pro. 398

zance, who stated the law as follows: "A person who is affected by monomania, although sensible and prudent on subjects and occasions other than those upon which his infirmity is commonly displayed, is not in law capable of making a will. * * * For I conceive the decided cases to have established this proposition, that if disease be once shown to exist in the mind of the testator, it matters not that the disease be discoverable only when the mind is addressed to a certain subject to the exclusion of all others, the testator must be pronounced incapable Further, that the same result follows, though the particular subjects upon which the disease is manifested have no connection whatever with the testamentary disposition before the Court."[1] In this case no more than in that of Waring *v.* Waring did the question of monomania necessarily arise. Mrs. Thwaytes believed herself to be the third person in the Trinity, while a Dr. Simms Smith, to whom she bequeathed all her property, was "The Father." She knew what he was thinking or doing, although he was at a distance from her. People attempted to poison her. Her husband was the Devil. Her heirs-at-law were doomed to perdition. She could never die. She was to ascend to heaven, and she had a tiara made with a view to the translation. She was above God. All these and many more delusions showed that her mind was disordered. Both of these cases, then, were cases of general not of partial insanity. In both, the delusions were multifarious and of the wildest and most irrational character, abundantly indicating that the mind was diseased throughout. "In both these cases," as Cockburn, C. J., remarked in another case to which we shall presently allude, "there existed ample grounds for setting aside the will without resorting to the doctrine in question."[2] And we cannot but think that the late learned Judge of the Probate Court stated the law, as from authority, with too great confidence. The rule in England had been laid down in the case of Dew *v.* Clark; and if he had inquired into the law of other countries, he would have found that the rule which he refused to recognize had been recommended by many jurists and given effect to by many Courts.

[1] Smith *v.* Tebbitt, 1 L. R., Pro. 398, at 401.
[2] Banks *v.* Goodfellow, 5 L. R., Q. B. 549.

§ 150. **The Rules of other Countries considered.**—The Roman law is as defective upon this subject as our own was until a very recent date. French writers are [188] very much divided with regard to this question. M. Troplong[1] and M. Sacase[2] have adopted the opinion that the mind is a unity, and have argued from this doctrine that if it is diseased in part, it is diseased as a whole. To us it seems as reasonable to argue that a man who is prejudiced with regard to any one subject cannot reasonably believe in any other, or that, as it may with as much truth be asserted, that as body and spirit are a unity, a man with the toothache is deprived of his capacity to dispose of his property by will. On the other hand, however, Legrand de Saulle[3] asserts that "hallucinations are not a sufficient obstacle to the power of making a will, if they have exercised no influence on the conduct of the testator, have not altered his affections, or prevented the fulfilment of his social and domestic duties; while, on the other hand, the will of a person affected by an insane delusion ought not to be admitted if he has disinherited his family without cause, or looked on his relations as enemies, or accused them of seeking to poison him, or the like. In all such cases, where the delusion exercises a fatal influence on the acts of the person affected, the condition of the testamentary power fails, the will of the party is no longer under the guidance of reason: it becomes the creature of his insane delusion."[4]

§ 151. **The Rule of American Law.**—The question of how far monomania should be regarded as affecting testamentary capacity has been discussed in several important cases in the United States, and a rule similar to that which we have seen laid down in Dew *v.* Clark has found favor in the eyes of American Judges. The doctrine enunciated in

[1] Le Droit Civil Explgné. Commentaire sur le donations vefs et testaments, tom. ii., § 451–7.

[2] La Folie Considérée dans ses Rapports avec la capacité civil, p. 16.

[3] La Folie devant les Tribunaux, p. 146.

[4] Hoffbauer, in his Médicine Légale. Paris and Fonblanque, Med. Jurisprudence, i., 302. M. Demolombe, in his Cours de Code Napoleon, liv. iii., tit. 2, ch. ii. § 339; M. Castlenau, in his Sur l'Interdiction des Aliéné; Dr. Ray, in his Med. Jurisprudence, § 279; and Maygorri, in his Institutizioni di diretto civile Italiano, have argued in a similar manner.

Waring *v.* Waring, and confirmed by Smith *v.* Tebitt, has been expressly repudiated. Thus, Judge Redfield, in his learned work on the law of wills, says with reference to it: "We have no apprehension that any such rule will permanently obtain currency in the English Courts."[1] And in an important case in the Supreme Court of Connecticut, the Court remarked that "the notion that a single delusion is general insanity, and that the jury are to be so instructed irrespective of the degree or intensity of it, is nowhere countenanced in this country, and not until lately in England."[2] It cannot be doubted for an instant that in most of the American States proof of monomania will not be sufficient to invalidate a will unless it be shown that the delusion affected the disposition. Where that is the case, then the will will be held void even although his general capacity is unimpeached.[3] This point was illustrated by Mr. Justice Sergeant[4] as follows: "If the erroneous and groundless impressions received during the time of his delirium shall retain their hold, whether by some physical derangement of the brain, or by some indelible stamp on the thinking faculties, that person must be considered still under a delusion—the effect continues, and it is only by effects we can judge of the existences of the exciting cause—and if he is under a delusion, though there be but a partial insanity, yet if it be in relation to the act in question, it is well settled it will invalidate contracts generally, and will defeat a will which is the direct offspring of that partial insanity."[5] This principle has been acted upon in various cases. Thus, in Lucas *v.* Parsons,[6] it appeared that the testator, during an attack of insanity, was most unfavorably impressed, and without any adequate cause, against his eldest son. He was subsequently

[1] Law of Wills, 3d ed., Boston, 1869, vol. i., ch. iii., § 10.

[2] Durham's Appeal, 27 Conn. 192, 204.

[3] Potts *v.* Howe, 6 Ga. 324; Townshend *v.* Townshend, 7 Gill, 10; Cotton *v.* Ulmer, 45 Ala. 378; Johnson *v.* Moore, 1 Litt. (Ky.) 371; James *v.* Langdon, 7 B. Mon. 193.

[4] Boyd *v.* Eby, 8 Watts, 71.

[5] See also Crum *v.* Thornly, 47 Ill. 192; Leech *v.* Leech, 11 Penn. Law J. 179.

[6] 24 Ga. 640. See also American Seaman's Friend. Soc. *v.* Hopper, 43 Barb. 625; Florey's Exrs. *v.* Florey, 24 Ala. 241; Johnson *v.* Moore, 1 Litt. 371; Jenckes *v.* Smithfield, 2 R. I. 255. But see Clapp *v.* Fullerton, 34 N. Y. 190; Kelly *v.* Miller, 39 Miss. 17; Gass *v.* Gass, 3 Hump. 278; Thompson *v.* Quimby, 2 Bradf. Sur. 449, S. C. nom.; Thompson *v.* Thompson, 21 Barb. 107.

restored to reason in every respect except in regard to this insane dislike. He made his will disinheriting his son, and it was held, as the character of the disposition was due to this morbid impression, that it ought not to stand. In the case of Leech *v.* Leech,[1] Judge King thus stated the rule of American law: "A monomaniacal delusion inveterately entertained by a testator against one who would otherwise have been the natural object of his bounty, and shown to be the reason that has excluded him from it, and to have had no other existence except in the distempered imagination of the testator, would invalidate a will made under such influence; and for the very plain reason, that a will made under the suggestion of such an insane delusion is not what the law requires a will to be, the product of a mind capable of reasoning rightly. For although the law recognizes the difference between general and partial insanity, yet if the will has been made under the influence of such partial insanity, and as the product of it, it is as invalid as if made under the effects of an insanity never so general. Eccentricities of conduct, absurd opinions, or belief in things appearing to us extravagant, although they may be and are evidences of testamentary incapacity, do not constitute it necessarily and in themselves. A man may believe in witches and witchcraft,[2] as it seems this testator did, or, like him, he may have believed his health to have been permanently affected by slow poisons surreptitiously administered to him, and yet be competent to make a will, where such will is not shown to have some connection with such absurd opinions or extravagant belief, and where the mind is shown to be in other respects sound and vigorous, and the judgment intelligent and clear." In a case to which we have already had occasion to refer, the Court stated that "if the testatrix had mind enough to know and appreciate her relations as the natural objects of her bounty, and the character and effect of the dispositions of her will, then she had a sound and disposing mind and memory, although her mind may not be entirely unimpaired."[3] In New Hampshire, too, the doctrine which we here contend to be

[1] 4 American Law J., N. S. 179.
[2] See Addington *v.* Wilson, 5 Ind. 137; Kelly *v.* Miller, 39 Miss. 19
[3] Durham's Appeal, 27 Conn. 192.

the correct one was enunciated as follows: "Mere moral insanity—disorder of the moral affections and propensities—will not, unless accompanied by insane delusions, be sufficient to invalidate a will or to incapacitate a person to make one," and that "if the will and its provisions were not in any way the offspring or result of the delusion, and were not connected with or influenced by it, then she was of sane mind to make the will."[1] In another case, it appeared that the testator was of strong mind, but at the same time he was eccentric, obstinate, and opinionative, but he was nevertheless held to be of sound mind. "His mind," said the Judge in his charge, "was greatly excited on a particular subject—his park property. He was stingy, and set a high value on his rights of property, but it was no evidence of mental delusion. A man may profess an absurd fondness for music, and play the Pandean pipes; behave like a fool occasionally; may tell his dreams, and call them visions, and may believe them; he may be addicted to telling lies about his will—yet, gentlemen, we could not, on these accounts, pronounce him unfit to manage his affairs or dispose of his property in his lifetime, and could not avoid his deed, nor condemn him to a lunatic hospital as a fit tenant for such an institution."[2]

§ 152. **The Principles of Law in relation to Capacity considered.**—It is quite necessary, in order thoroughly to understand this subject, to understand the principles upon which the law allows men to dispose of their property by will; and the reasons which have induced the modification of these principles, in cases where insanity causes incapacity, ought to be appreciated. It is certain that every right which is given to a man by law, is given upon the understanding that it shall be exercised under a sense of moral obligation and responsibility. It is such a sense that makes the exercise of all privileges a benefit to the individual, to his neighbors, and to the State. So it [189]is in the right to make a will. The law takes it for granted that the ordinary sentiments of mankind will lead men to the proper exercise of this power. The proper exercise of this power is evidently in most cases a

[1] Boardman *v.* Woodman, 47 N. H. 120.

[2] Turner *v.* Hand, 3 Wal. Jr. 120. See Stackhouse *v.* Horton, 15 N. J. Ch. 252.

matter of no difficulty. A man, when he anticipates death, has a pleasure in feeling that what he had no wish to use himself will be enjoyed by others. There is no selfishness in true love. So it happens that a man leaves his property to those who are nearest and dearest to him. Nature makes those persons who are bound by the ties of relationship dearer to a man than others who are not. There is a natural duty which affection turns to pleasure, which makes it right for a man to support his children while they are still too young to be able to support themselves, and it is an extension of this feeling which makes a man leave his property to his children when he dies. Any admirable laws of succession ought to be founded on such facts of human nature, and not upon arbitrary views as to what may be right and good for the advancement of a country. Were it not that men are almost invariably led by their feelings and affections, by their sense of justice and moral obligation to do what is right, this privilege would not have been conferred on them by law. Law could have undertaken the distribution of all property upon the death of every individual, as it at present does in cases of intestacy. But there are excellent reasons why this was not done. Equality is not justice; and the law, in dividing property, must give equally to all in a certain degree, or it must indulge in arbitrary divisions, such as we find in primogeniture, in gavelkind, or in borough English, in relation to real property. But it is evident that any of these may do much injustice, which would not be done if a man had the disposition of his own property. For one person may already be provided for; one may have had large sums expended on education, on advancement in life, while others had not yet come to that time of life when similar acts done in their favor would become possible. Besides, while the law would find it difficult to recognize the claims of necessity, such as age, sex, infirmity, and the like, and could not be cognizant of friendship, love, tried service, long-standing obligations, which are also claims, the man himself could recognize and reward these, as they undoubtedly deserve to be recognized and rewarded. Besides, this power is a most important right incident to the possession of property. If a man had not power to recognize love and affection, to reward duty

[190]done, and worthy conduct, who would respect the old man when he came to be weak? Human nature has an abhorrence of weakness. In some nations they put the aged to death. "We do not count a man's years until he has nothing else to count."[1] But with us age is not a reason for neglect, and weakness is a reason for more kindly attention. "It is one of the painful consequences of extreme old age," says Chancellor Kent, "that it ceases to excite interest, and is apt to be left solitary and neglected. The control which the law still gives a man over the disposal of his property is one of the most efficient means by which he has, in protracted life, to command the attentions due to his infirmity."[2] For these reasons, then, the possession of the power of disposition is evidently one of value to those to whom it is intrusted, and of importance to the interests of all. As the respect which is continued to a man in consequence of this power, even when he is in extreme old age, is an incentive to the acquisition of wealth, and to the practice of prudence and forethought which accompany thrift and frugality, the English law, then, leaves everything to the unfettered discretion of the testator, upon the principles above alluded to. But it is essential to the exercise of such a power that the individual to whom it is intrusted should be in a condition to understand the nature of the dispository act and appreciate its effects, that he should know what property he has to dispose of, the claims that are upon him, and their relative importance, and should desire that his property should be disposed of in a certain manner. In order that this may be so, it is necessary that no false impressions should exist in his mind at the time of the testamentary act, whether they be induced by the force or fraud of an individual, or by the direr force or fraud of a diseased mind. That disease may, as we have seen in other places, deprive the individual of all knowledge as to his surroundings; it may warp and pervert his affections; it may obliterate his sense of moral obligation, of justice, of truth; it may change, without other cause, love to hate, friendship to enmity; it may deprive him of all desire

[1] Emerson's Society and Solitude, p. 270.
[2] Van Alst *v.* Hunter, 5 Johnson, Ch. 159.

as to the disposition of his property, and all knowledge of the amount or extent of the property of which he has a right to dispose. We have in this way arrived at a certain standard, which will enable us in all cases to ascertain the amount of mental power which is [191]necessary to constitute the capacity of disposing of property by will. And this is true, whether the incapacity is produced by means of moral or intellectual mania—by means of imbecility or dementia.

§ 153. **The Rule as to Delusion and Capacity as definitely settled.**—This principle has been followed in a recent case in which the question as to whether a delusion, which was not calculated to influence the disposition of property, should be held to invalidate the capacity was tried. In every respect the judgment in this case is most instructive. The case referred to is that of Banks *against* Goodfellow.[1] The facts in this case were these: the testator had been confined as a lunatic for some months in 1841, and he remained subject to delusions that he was personally molested by a man who had been dead for years, and that he was pursued by evil spirits whom he believed to be visibly present, and it was proved that these delusions had existed between 1841 and the date of the will, and also between that date and the testator's death in 1865. Some contradictory evidence was given, as is usual in such cases, as to the testator's capacity to manage his own affairs, but it was admitted that at times he was incapable of making a will. The question which was left to the jury was whether at the time of making the will the testator was capable of having such knowledge and appreciation of facts, was so far master of his intentions, and free from delusions, as would enable him to have a will of his own in the disposition of his property, and act upon it, and they were directed that the mere fact of the testator's being able to recollect things, or to converse rationally on some subjects, or to manage some business, would not be sufficient to show he was sane, while on the other hand slowness, feebleness, and eccentricities, would not be sufficient to show he was insane; and that the whole burden of showing that the testator was fit at the time was on the party claiming under the will.

[1] 5 L. R., Q. B. 549.

Lord Cockburn, C. J., in delivering judgment, said that "it was necessary to consider how far such a degree of unsoundness of mind as is involved in the delusions under which this testator laboured would be fatal to testamentary capacity; in other words, whether delusions arising from mental disease, but not calculated to prevent the exercise of those faculties essential to the making of a will, or to interfere with the consideration of the matters which should be weighed and taken into account on such an occasion, and which delusions had, in point of fact, no influence [192] whatever on the testamentary disposition in question, are sufficient to deprive a testator of testamentary capacity and to invalidate a will." He then examined the evidence which was adduced in proof of the existence of partial insanity, and after an exhaustive consideration of what has been said by the text writers in this and other countries concerning this subject, he proceeded to consider some of the cases which have been decided in English and American courts of law in which questions of capacity have been raised. In the course of his judgment he said: "No doubt when the fact that the testator had been subject to any insane delusion is established a will should be regarded with great distrust, and every presumption should in the first instance be made against it. When insane delusion has once been shown to have existed it may be difficult to say whether the mental disorder may not possibly have extended beyond the particular form, or instance, in which it has manifested itself. It may be equally difficult to say how far the delusion may not have influenced the testator in the particular disposal of his property; and the presumption against a will made under such circumstances becomes additionally strong where the will is, to use the term of the civilians, an inofficious one, that is to say, one in which natural affection and the claims of near relationship have been disregarded. But when in the result the jury are satisfied that the delusion has not affected the general faculties of the mind, and can have had no effect upon the will, we see no sufficient reason why the testator should be held to have lost his right to make a will, or why a will made under such circumstances should not be upheld. Such an inquiry may involve, it is true, considerable difficulty, and require much nicety of discrimination,

but we see no reason to think that it is beyond the power of judicial investigation and decision, or may not be disposed of by a jury directed by a judge. In the case before us two delusions disturbed the mind of the testator, the one that he was pursued by spirits, the other, that a man long since dead came personally to molest him. Neither of these delusions, the dead man not having been in any way connected with him, had, or could have had, any influence upon him in disposing of his property. Under these circumstances, then, we see no ground for holding the will to be invalid." The rule, therefore, which was applied for on the ground that the Judge misdirected the jury, and that the verdict was against the weight of evidence, was discharged.[1] In this way, this very difficult and much disputed question has been set at rest, and it is upon the law as stated in that judgment that the Judges in England at the present time act. In the case of Hobson *v.* Nicholson, which was an issue sent down by the Court of Probate, and tried before Mellor, J., at Leeds, on the 4th and 5th of August, 1871, it appeared from the evidence that the testator, who had been seen by a medical man some years before his death, had, upon his recommendation, been sent to the Mountstead Asylum. Dr. Smith, the proprietor of the asylum, gave evidence that during the whole time he had been under his care, he had been insane, and had labored under delusions that people were poisoning his food, his clothes, and his bedding, and these delusions were associated, not with any particular person, but with all the persons who were about him. He also believed that he had been born again. Shortly before his removal from the asylum, he was visited by his brother and sister. He knew them, spoke to them rationally, and said, "It was a wrong thing to send me to the asylum at all." After his removal from the asylum, he was said to have improved in health and in mental condition, and some of the witnesses declared that he was free from delusion. Certain experts were called, and said that the change of scene and the near approach of death might in the case of a functional disease cause the delusions to disappear and the

[1] Sir James Hannen, the present Judge of the Divorce Court, was a party to the judgment in Banks *v.* Goodfellow, and has intimated that he regards that judgment as an accurate statement of the law. Boughton *v.* Knight, 42 L. J. P. 25.

mind to become clearer. One important piece of evidence was given by the solicitor who drafted his will, which was framed on instructions given by the testator personally, that during the reading of the instrument the testator stopped him and said, "Stop, that is not what I meant;" and explained his meaning fully. The Judge, in summing up, remarked that he could not agree with the doctrine laid down by Lord Penzance in Smith *v.* Tebbitt, and must adhere to the opinion expressed by the Court of Queen's Bench in Banks *v.* Goodfellow: that a man might be insane and yet possess a disposing mind, and that if they came to the conclusion that the delusions, although still existing, had not affected the disposition, they would find a verdict for the plaintiffs who propounded the will. The jury, in answer to the three questions which were left to them by the learned Judge, found: 1. That the testator was of sound mind. 2. That there was no connection between the delusions and the disposition. 3. That at the time the will was executed the testator knew what he was doing—knew he was disposing of his property, and knew also the relations of those who might have claims upon him to himself.[1]

§ 154. **Contracts by a Lunatic.**—From what has been said with regard to the nature of the disease which is called insanity or lunacy, and from the psychological symptoms which accompany it, it could only be the law that when these symptoms are general, affecting the whole scope of thought and action, and permanent, the lunatic is wholly incapacitated from contracting either in his own behalf or as agent for another person.[2] If, on the other hand, the disease is intermittent, if the delusions occur only from time to time, or if permanent, connect themselves only with one subject or class

[1] Author's notes taken at the trial. Lord Penzance afterwards granted a rule *nisi* for a new trial in this case, on the ground that the learned Judge had followed Banks *v.* Goodfellow, but the case was never argued. As to the law of Scotland on the subject of testamentary capacity and warranty, see Stair's Inst. B. 3, tit. 8, § 37; Towart *v.* Sellars, 5 Dow, P. C. 231, 247; White *v.* Ballantyne, Shaw App. 472; Watson *v.* Noble's Trustees, 4 Shaw, 200; McDearmid *v.* McDearmid, 3 Bligh, N. S. 374; 4 Sh. & Dunlop, 583. See also Erskine's Ins. B. 4, tit. 1, § 27; and Tulloch *v.* Arbuthnot (Viscount) 25 Jan. 1759; 1 Lord Kames' Eq. 106.

[2] Sentence *v.* Poole, 3 Car. & P. 1; Dunnage *v.* White, 1 Wils. C. C. R. 67; Hall *v.* Warren, 9 Ves. Jr. 605.

of subjects, then the incapacity to contract is limited to the subjects in respect of which the party is insane, and to the time during which he is suffering from an exacerbation of the disease.[1] If, therefore, as we shall see hereafter, a contract be made by an insane person during a lucid interval, it will be valid and binding although the party be insane immediately before and after. In monomania, which has been described as a lucid interval upon all subjects but one, the capacity to contract is to be restricted to that class of subjects in respect of which such lucid interval exists, or upon which he is entirely sane. It should always be made to appear clearly that the contract was the result of his rational judgment, and that it was not influenced by any disease which might manifest itself antecedently or concurrently. It is to be remembered that when a person is proved to labor under monomania, the presumption is that he is incapable of contracting, and it is incumbent on the other party seeking to recover against him to prove clearly that the lunatic or monomaniac was perfectly sane and in full possession of his powers at the time when the contract was made.[2] But we have to remember that an action for the price of goods sold and delivered, or of work done, or for hire of horses, carriages, or servants, cannot be defeated by showing that the defendant had been found by inquisition to be a lunatic at

[1] Hall *v.* Warren, 9 Ves. Jr. 605; Lewis *v.* Baird, 3 McLean, 56.

[2] Attorney General *v.* Parnither, 3 Bro. Ch. C. 441. There Lord Thurlow said: "If derangement be alleged, it is clearly incumbent on the party alleging it to prove such derangement. If such derangement be proved or be admitted to have existed at any particular period particularly referred to, then the burden of proof attaches to the party alleging such lucid interval, who must show sanity and competence at the period when the act was done and to which the lucid interval refers; and it certainly is of equal importance that the evidence in support of the allegation of a lucid interval after derangement at any period has been established, should be as strong and as demonstrative of such fact as where the object of proof is to establish derangement. The evidence in such a case, applying to stated intervals, ought to go to the state and habit of the person, and not to the accidental interview of any individual, or to the degree of self-possession in any particular act; for from an act with reference to certain circumstances, and which does not of itself mark the restriction of that mind which is deemed necessary, in general, to the disposition and management of affairs, it were certainly extremely dangerous to draw a conclusion so general as that the party who had confessedly before labored under a mental derangement was capable of doing acts binding on himself and others." See Yates *v.* Boen, 2 Stra. 1104; Thomson *v.* Leech, 3 Salk. 301; Sergeson *v.* Sealy, 2 Atk. 413; Faulder *v.* Silk, 3 Camp. 126; Creagh *v.* Blood, 2 Jones & Lat. 503.

the time he received the goods, or had the benefit of the work, or the use of the horses, carriages, and servants,[1] for the law does not permit the lunatic's infirmity to be made an instrument of fraud upon third parties who dealt with him in good faith.[2] If a lunatic, apparently of sound mind and not known to be otherwise, enters into a fair and *bona fide* contract, such contract cannot afterwards be set aside. Thus, where a lunatic purchased of an assurance company two annuities for his life and paid down the purchase money, and it appeared that the company had at the time of the transaction no knowledge of his insanity, it was held that the contract could not be avoided.[3] Again, where an insane person contracted for the purchase of an estate and paid down a deposit, and the vendor treated fairly and in good faith, it was held that the deposit could not be recovered back.[4] Contracts entered into by sane persons who subsequently become insane may be enforced against them;[5] and the lunacy of a husband is held to be no answer to an action brought against him upon the ordinary implied contract for the payment of the price of necessaries supplied to his wife.[6]

[193]It will be evident that the principles which have been laid down with reference to the connection between a delusion entertained and the validity of the act performed will not apply with regard to the contract of marriage. As we have seen that the mere answering of simple questions, the carrying on of a common-place conversation, will not prove the existence of sufficient sanity and capacity to make a will, neither will the ability to understand the ordinary process of the act of marriage, the capacity to go with usual accuracy through a well-known service prove anything with regard to the real ability of the individual to enter into the contract. The essence of all contracts is consent, and a man who is about to enter into a contract of marriage must understand

[1] Brown *v.* Jodrell, 3 Car. & P. 30; M. & M. 105; Niell *v.* Morley, 9 Ves. 478; Dane *v.* Kirkwall, 8 Car. & P. 679; Bagster *v.* Earl of Portsmouth, 7 D. & R. 614; 5 B. & C. 170.

[2] Nelson *v.* Duncombe, 9 Beav. 211; 15 L. J., Ch. 296.

[3] Molton *v.* Camroux, 4 Exch. 17.

[4] Beavan *v.* McDonnell, 9 Exch. 309.

[5] Lord Eldon, Owen *v.* Davies, 1 Ves. Sen. 82; Hall *v.* Warren, 9 Ves. 605.

[6] Read *v.* Legard, 20 L. J., Exch. 309.

the new relation which the consummation of this contract creates: he must understand the responsibilities which it imposes, and the duties the performance of which it involves. Unless the individual can appreciate these things he cannot be said to be in a position to give a rational consent, without which the contract will be invalid. In regard to other contracts the capacity of monomaniacs may be undoubted, for in most contracts the thing to be given, or the act to be done or to be refrained from, is perfectly definite, and there is little possibility of any misunderstanding. But this is not the case with regard to marriage, and just in proportion to the difficulty with which, owing to the complicated nature of the duties and privilges of the married state, the character of this act can be understood, so ought to be the rarity of the cases in which persons laboring under partial insanity should enter upon it. Sir John Nicholl has well said concerning this subject, "going through the ceremony was not [194]sufficient to establish the capacity of the party, and that foolish, crazy persons might be instructed to go through the formality of the ceremony though wholly incapable of understanding the marriage contract."[1] It is clear that this is the correct view to take of this question, for the very nature of a contract implies that both parties know what they agree to, and if it can be proved that, owing to delusions upon the part of one of the contracting parties, there has been a want of mutuality, the contract evidently becomes of none effect.

§ 155. **Lunatic's Liability for Torts.**—A lunatic who commits a trespass on the person or property of others is, by the common law, held to be liable to an action for damages.[2] There can be no dispute as to the excellence of this principle. It may be true that the individual is utterly unconscious of the damage he has done: he may be in such a morbid

[1] Browning *v.* Reane, 2 Phillim. Ecc. Rep. 69. See also Turner *v.* Meyers, 1 Hagg. Con. Rep. 414; Parker *v.* Parker, 1 Hagg. C. R. 417; Ellis *v.* Bowman, 17 Law T. 11; Reg. *v.* Kelly, Shelf. on Lun., 2d ed., 515; Inst. Juris. Con., b. 2, t. 12, and 15 Geo. II., c. 30. See Private Acts, 23 Geo. II., c. 6.

[2] Weaver *v.* Ward, Hobart, 134; Bac. Abr. "Trespass" (G); Cross *v.* Andrews, Cro. Eliz. 622. That intent is immaterial, see per Lord Kenyon, C. J.; Haycraft *v.* Creasy, 2 East, 104. See also Simmons *v.* Lillystone, 8 Exch. 431; Stead *v.* Anderson, 4 C. B. 806; Judgm. Rogers *v.* Dutt, 13 Moo. P. C. 236.

mental condition as to be incapable of guiding his acts in any way, and some people who look at one side of a subject may say, is it fair he should, when he becomes sane again, be deprived of all his property to meet the claims of those he has injured during his insanity? But the case stands thus: A maniac, who does not know what he is doing, injures the property of a sane man who does not know what the maniac is doing, and the question is which of these shall suffer. It is evident that in many cases where injuries to the persons or properties of others is done by insane persons, the insane person is in some measure culpable. In many cases, individuals are aware that insanity is coming on, and they are therefore in a position to take precautions against any evil consequences which may arise during the continuance of the disease. This is proved by many of the cases which have been quoted. It takes place even in relation to impulsive insanity, which gives the least warning of its coming. And we find persons warning others to save themselves by getting out of their way, and others voluntarily placing themselves under restraint. Now, if a lunatic is aware of the imminence of the disease, and does nothing to avoid consequences which may arise from diseased impressions, he is to a certain extent culpable. In such a case it is evident that the insane person should be made to recompense any one that he has injured in person or property during the continuance of the diseased condition. But even where this is not the case, the common law principle is consistent with equity and justice. Why should a man suffer because he is sane, and have immunity because he is insane?

§ 156. **Insanity in relation to Partnership.**—One other legal relation of insanity must be considered in this place. Partnerships are entered into with a view to mutual assistance—with a view to the accomplishment of common undertakings which are to result in the advantage of the members of the firm. But all undertakings require two kinds of capital before they can be entered upon—a capital of money, or money's worth, and a capital of skill, of experience. It may happen that one of the partners brings the whole of the

former, while all the experience, all the knowledge, all the skill, is to be contributed by the other. Such arrangements are by no means uncommon. If, after such an arrangement had been entered into, the partner who was to bring his skill to bear for the mutual benefit of both were to be incapacitated by mental disease, it would seem to be a case calling for the interposition of the court of equity.[1] "Insanity," says Mr. Bell, "has the effect not only of depriving the partner of the power of aiding the partnership by his exertions, but it prevents him from controlling for his own safety the proceedings of his copartners. And, accordingly, where there are two partners, both of whom are to contribute their skill and industry, the insanity of one of them, by which he is rendered incapable of contributing that skill and industry, seems to be a good ground to put an end to the partnership. At the same time, it may be observed that these cases are cases of infinite delicacy. There is no line of distinction by which it shall be ascertained how long a term of inability shall justify measures of this description. A broken leg or an accidental blow may incapacitate a partner for a time as much as insanity, and the one may be as temporary as the other; and perhaps the nearest approximation to be made to a rule on the subject is that a remedy and relief will be given where the circumstances amount to a total or important failure in those essential points on which the success of the partnership depends."[2] But it could not be held that mere temporary insanity would be a ground for dissolving a partnership. No man devotes the whole of his time to business, and it would almost be as reasonable to claim relief on the ground that one's partner took a holiday as on the ground that he was temporarily incapacitated from performing his duties, although that incapacity arose from mental disease. [193] With regard to the legal relations of the partially insane it may be said generally that they should be left in possession

[1] See Story on Partnership, § 292; Crawshay *v.* Maule, 1 Swans. 495, 514; Jones *v.* Noy, 2 Myl. & K. 125; Wrexham *v.* Huddleston, 1 Swans. 514, note; Waters *v.* Taylor, 2 Ves. & B. 299; Wray *v.* Hutchinson, 2 Myl. & K. 235, 238.

[2] Bell's Commentaries, 7th ed., pp. 525, 526; Sayer *v.* Bennet, in Montague on Partnership, vol. i,, notes, p. 16. See per Lord Chancellor Eldon, in Waters *v.* Taylor, 2 Ves. & B. 302.

of every civil right that they are not clearly incapable of exercising, but at the same time they ought not lightly to be subjected to the performance of duties involving the interests and happiness of others. We see no reason, however, for saying that in no case shall a monomaniac occupy a position implying a fiduciary character, such as becoming a guardian or trustee, but we would recommend great caution before duties which, if not properly performed, may involve others in unhappiness and discomfort, are thrust upon those who may be unable to discharge them efficiently.

CHAPTER VIII.

MORAL MANIA.

§ 157. **Necessity for distinguishing Crime from Insanity.**—[104]That the one black sheep which is within the fold of a respectable household should be whitewashed, may, to piebald brothers and sisters, seem a desirable thing. That a family moving in good society, and living in a good street, should, in the event of one of its members committing a crime, have recourse to the family physician rather than to the police, and should look upon the act as a symptom of disease and not as a crime in the true sense of the word, seems a very natural proceeding. For a long time insanity was looked upon as the work of God's hand, while, even at the present day, the Devil is regarded as the mechanist of crime. If, then, a family has an opportunity of mistaking the hand of the Devil for that of God, it will probably embrace it. Many a one when asked, like Sam Weller, if he can see the individual who was guilty of contempt of court, and knows that that individual is a relation, and had laid himself open to punishment, will look at the ceiling, and say "No!" Heaven knows that the grandest things upon earth are those dear home-eyes which will not see our faults—those dear lips that are "no thoroughfare" for reproaches, and those dear heads which are armories full of defences of our errors, which would fain find a leaning to virtue in all our vices, and the mental darkness caused by the shadow of God's hand in that night of the moral life in which the Devil rides. But although friends may be breakwaters about the home-harbor, it is the duty of a government to punish crime, and in order to do so, it is necessary to distinguish crime from insanity.

§ 158. **Theories of Moral Insanity.**—Is there, then, such a disease as moral mania?—a disease the symptom of which is crime—and if there is such a disease, how is it to be distinguished from immorality? Pinel was the first who [105] asserted that there were "many maniacs who betrayed no lesion whatever of the understanding, but were under the dominion of instinctive and abstract fury, as if the affective faculties alone had sustained injury;" and very many writers since his time have distinguished between intellectual and moral insanity. Some have argued that this disease is exclusively confined to the moral sense, that it may coëxist with a perfectly healthy condition of every other faculty, and that the only symptom which manifests the presence of disease is depravity in a somewhat exceptional degree.

§ 159. **Crime and Insanity.**—That twenty convictions would prove a man mad, the law has as yet denied. That if the disease is manifested by no other symptoms than the commission of criminal acts, the individual shall be liable to the consequences of those acts, the law has upon more than one occasion asserted; and although many loud voices have been raised against the law on account of that denial and that assertion, the principle laid down seems to us to be sound. Nay, further, although we admit that crime is in many cases a sign of the presence of disease, and although we think that in most cases in which it is so, the history of the individual, and the presence of insanity or nervous disease in the parents will establish the fact of moral insanity in the individual under examination; we are of opinion that only on very rare occasions should moral insanity stand between the individual and the consequences of his criminal acts, for it seems to us certain that punishment is in most cases one of the means of cure, and that moral maniacs may be restrained from criminal acts by an adequate system of discipline.

§ 160. **The Psychology of Moral Insanity.**—The philosophy of the subject seems somewhat defective. We find frequent assertions that this disease consists in a morbid perversion of natural feelings, or habits, or moral dispositions, and that it is unaccompanied by any lesion of the intellect;

that it is a disease of the moral sense, and various other assertions of similar import. Writers have not taken the trouble to ascertain, in the first instance, whether there be a moral sense or not; they have not endeavored to discover whether it is possible that reason, when directed in one particular direction, can be affected with disease, while in other directions it can be exercised under all the conditions of health. It is an easy thing to take for granted, and then to assume as proved.

§ 161. **Ethics and Government.**—Ethics is the science of the laws of our actions looked at with [106]regard to their morality or immorality, and presupposes a knowledge of man as a moral agent. If, however, our ideas of right and wrong are formed in connection with the ideas of reward or punishment—if our dislike and disparagement of certain actions, and our approbation and praise of other actions, is founded on our belief that in the one case the individual committing the action should be punished, and that in the other case he should not, it is evident that our moral distinctions have an intellectual origin, and that any such phrases as moral sense, or conscience as distinguished from ordinary intellectual function, are apt to deceive, and any distinction between moral and intellectual insanity is unphilosophical. This is not the place to consider whether this is a true statement of the fact or not. Man, individually, ought to make all his actions perfect. Government has to be content with a moral code that will *do*. Government cannot enact the whole moral law as laid down in books of ethics or in great human hearts. All it can attempt is to make men free to be good if they will, by restraining acts of violence. Expediency is essentially the science of government, and as that is the case it will be sufficient if we, in this place, point out what acts government ought to recognize as moral, what acts government ought to punish as immoral, and in what way a somewhat rough and ready morality may be applied to the solution of the questions which arise in reference to the so-called moral insanity.

§ 162. **The relation of Laws and Morals.**—That for all governmental purposes "good" may be defined as "happi-

ness," and "bad" as "misery;" and that as each person's happiness is in this view regarded as good to that person, the general happiness must be regarded as a good to the aggregate of persons, seems to us to be true. That those actions which tend to the happiness of the individual, and which do not interfere with any enjoyment of other persons, should be regarded by the legislature as moral, and that such acts as lead either directly or indirectly to the misery of the individual, or which, while ministering to the happiness of the individual, are calculated to take, either directly or indirectly, from the happiness of others, should be regarded as immoral, seems to us fair. The government, be it representative or not, is a trustee for the community. The object of the trust is the attainment of the greatest amount of happines to the *cestui que trust*, and one of the means adopted in this country for the [107]attainment of that object is the enactment of a code of laws, which declares that certain acts—believed to militate against the public good—shall be punished in case they are committed, not because government wishes to punish crime that has been committed, but because the invariable connection between an act and a serious disadvantage to the actor is likely to lead to the discontinuance of the act, and in that way lead to the greater happiness of the community.

§ 163. **Distinction between Men and Animals: Mental Characteristics.**.—The various mental peculiarities, some of degree, some of kind, which distinguish man from the brute, seem to be—1. The greater ability of the former to profit by experience, to get the essence out of facts, to learn something more from his faults and failures. 2. The more perfect means of communication which man possesses in grammatically constructed languages, and a much more complete repertory of the lower gestures of body, and the higher gestures of expression. 3. The more intimate relations of man to man than those which exist between animal and animal, which lead to an infinitely great play of feeling, to voluntary ornamentation, which is not directly connected with material well-being, and to which may be referred the tendency to associate, which is characteristic of man, and which

induced Aristotle to call him a political being. But of these three characteristics of humanity the first seems to us, perhaps, the most important, and possibly the characteristic to which the development of the other two peculiarities might be referred. With regard to the power which is inherent in the being of man, of availing himself of surrounding phenomena, of profiting largely by experience, and of advancing through failure to success, through pain to pleasure, it must be borne in mind that animals have the same power, although in a less degree. Monkeys that have once burned their lips in swallowing hot liquids afterwards wait with patience until they are cooled.[1] Every one knows that by means of rewards and punishments dogs, cats, canaries, and fleas, can be taught many things. But there is a certain degree in which this power or capacity is possessed by different animals, and beyond that power punishment is thrown away, or rather its effects are manifested, not in the improvement of the individual on whom the punishment is inflicted, but in deterioration both of the individual punishing and the individual punished. The doctrine of all true [108]educational or reformatory punishment is to punish as long as the individual and class to which he belongs, and on whom the example will operate most powerfully as a deterrent, have capacity sufficient directly to concatenate the suffering with the offence, and to understand how they may avoid the commission of a like crime. Any infliction of punishment under circumstances other than those just alluded to is not only inefficacious, but tends to diminish the aggregate happiness of mankind, and is to that extent a breach of the trust reposed in the government of the country.

§ 164. **When the existence of Moral Mania should be admitted.**—It will, therefore, be understood that repeated convictions on account of the same crime would naturally lead to a suspicion of an amount of incapacity which would justify the law in exempting an individual from criminal consequences; and while such an amount of incapacity is proved in reference to acts occurring in the life of the individual,

[1] Bennet, Wanderings in New South Wales, vol. ii., p. 158.

other than those which have come under the cognizance of courts of law, the presumption is strengthened; and further, if in conjunction with these circumstances it is found, upon inquiry and examination, that there is an inherited tendency to insanity, or malformation of the skull—if the history of the case is such as to lead a physician to suppose that it is not impossible that the mind may be diseased, in such a case it seems to us that the law would do well to admit the existence of moral mania, and exempt the individual from the legal consequences of criminal acts. But in no case, it seems to us, should such a disease be regarded as protecting the individual from these consequences, in which it cannot be clearly and satisfactorily proved that *quoad* the act—the character of which is in question—the accused was not a voluntary agent and sentient being. We shall, in another place, consider this subject more fully, and point out the reasons for the legal principles which are applicable to the rare cases in which this disease of the feelings and volitions of an individual is proved.

§ 165. **What Physicians expect the Law to do in relation to Moral Mania.**—But the law is asked to do more: it is asked to believe that persons who, while "labouring under this disorder, are," according to Pritchard, "capable of reasoning or supporting an argument on any subject within their sphere of knowledge that may be presented to them—and they often display great ingenuity in giving reasons for their eccentric conduct, and in accounting for and justifying the state of moral feeling under which they appear to exist"[1]—are in no case fit objects for punishment. In order to show the ideas which are entertained by some physicians as to the duty of the law in relation to crime, we may refer to a case alluded to by Dr. Gray,[2] in which a medical man maintained in the witness-box that mania might be so brief as to come on in an instant, simply from seeing a person against whom you had some feeling that you had been wronged, and

[1] Cyclopædia of Practical Medicine, Art. "Insanity," p. 826.

[2] Of the State Lunatic Asylum, Utica, N. Y. We quote from a report of a speech made during the proceedings of the Association of Medical Superintendents (America) held May, 1872. American Journal of Insanity, Oct. 1872.

disappear instantly with the firing of a pistol or plunging of a dagger into his heart. He further asserted that the very act was not only the culmination of insanity, but the cure of the disease. This was in a case in which it appeared that the accused, a woman, had provided herself deliberately with a pistol, watched for her victim to enter a street car, walked into the car and sat down, looked the man in the face, spoke to him, and having received, as she said, an insulting answer, shot him instantly. The medical witness declared that the accused was sane up to the time the reply fell upon her ear; that the reply was the goad to the madness which was instantly developed; that an irresistible, insane impulse was aroused in the breast, not one of criminal intent and character, but one arising from the complete overthrow of the intellect—a form of insanity instantly developed under the circumstances in which she saw the man. Although she saw the smoke, saw the wound in his face, and saw the pistol and picked it up, adjusted it and fixed it back in its place, although thus instantaneous, this was insanity—disease—and the shooting relieved the mind, and the person was at once well. Now, a medical man labored under the ridiculous belief that he would get people to believe him, and actually had the effrontery to expect that the law would recognize such an insanity as an excuse for crime. It is owing to such demands that the criminal courts of this country have been less willing to admit moral insanity as a bar to punishment than they would otherwise have been, for those persons who have gone so far as to assert that a morbid perversion of sentiments, as manifested by repeated acts of crime, should in all cases be treated as disease, have not hesitated to regard all crime as a form of morbidity, instead of regarding it, in its truest sense, as one of the conditions of the health of a [109] community. That such pretensions should have made lawyers and legislators skeptical as to the authority to be attached in questions of this kind to the evidence of medical gentlemen, was not to be wondered at.

§ 166. **The Nature of Moral Insanity considered.**—But the two questions—Is there moral insanity? and if it is proved, how far should law recognize it as depriving the in-

dividual of that capacity which is commensurate with responsibility?—are distinct. As to its existence, let us examine the evidence. 1. It is asserted by many of the ablest writers upon insanity. 2. There are many cases in which the motiveless character of the act done, the past history of the individual, the carelessness as to whether the commission of the crime be discovered or not, lead to a belief in the existence of insanity. We almost invariably find that this form of insanity is said to be accompanied by what are called "depraved impulses," and that it is asserted by many that "defective volition," and "perverted emotions" are mental symptoms of the presence of this form of disease. Now, as ordinary criminals have depraved impulses, as their wills must be defective to some extent, and as their reasoning powers must, through this deficiency, have led to their detection; as, further, the emotions of criminals are not generally of a very perfect human type, it would seem necessary clearly to understand what is meant by the assertion of those who pretend to know something about the subject.

§ 167. **Peculiarities of the Cognitive Faculties.**—Before doing so we may state our belief that, through various circumstances to be afterwards alluded to, a man may reason correctly concerning one set of phenomena, while he is incapacitated from reasoning concerning other sets. We find in ordinary life that Reason does not seem to be current coin, but a sort of local issue—that the very familiarity with the logical sequence in relation to a certain class of facts renders the individual unable to appreciate the same identical sequence in relation to facts of a different nature—that there seem to be men who can reason concerning the dry-bone facts of science, and are utterly unable to grasp the sappy facts of human science. A very limited knowledge of abnormal conditions will serve to convince one of the truth of the fact that this is much more prominent in connection with disease. So that at this stage it would be wrong to deny that a mind, because it shows shrewdness and ingenuity with relation to many intellectual matters, may, at the same time, be unable to appreciate the relation of acts to personality [110]looked at in their moral relation, just as there are many

perfectly sane persons who can never come to regard virtue as an end in itself, which must ever be one of the crowning advantages of all true morality; for, as Mr. Mill observes, "there is this difference between it (the love of virtue for its own sake) and the love of money, of power, or of fame, that all these may, and often do, render the individual noxious to the other members of the society to which he belongs, whereas there is nothing which makes him so much a blessing to them as the cultivation of the disinterested love of virtue."[1] We proceed, then, to inquire what this "impulsive insanity" may be. As for the literature of the subject, so far as it has come under our notice, it is simple assertion, together with reports of some cases in which impulse was supposed to be present; and we may say here, that if medical gentlemen would, instead of clamoring for the recognition of irresistible insane impulses in courts of law, devote themselves to the proof of their existence, their time might be more profitably spent.

§ 168. **Insane Impulse considered.**—We know how intimately all our feelings are connected with thought, and how much thought is influenced by feelings. Well has Bacon said—"The light of the understanding is not a dry light, but drenched in the will and affections;" and it is well, in further explanation, to add that thought is, as it were, the skeleton of our mental life, while feelings and desires are the muscles and nerves which clothe it. Under such circumstances it is impossible to see in what way the one set of faculties, so to speak, can be affected without the other. If a man does not know right from wrong he reasons badly. If he is unable to restrain desires by the leash of thought, or by fear of consequences, again he reasons badly. If the ordinary motives have no influence over the mind of an individual, we say he is a fool, or he is mad. Now, there are very various ways in which a man may lose control over his actions. If you tickle the sole of a sensitive foot during sleep the leg is withdrawn by what is sometimes called "involuntary" retraction. If acts are repeated very often they become what is popularly

[1] Utilitarianism, 2d edit., p. 57.

called "second nature," that is to say, they become as involuntary as any of the actions which are performed during infancy, or as any of those habits which are the heritage of the race. Many actions in this way pass beyond the range of will or motives, for every act [111] tends, by repetition, to become easier, and to pass out of the dominion of wilful choice into that of automatic origination. Every one knows the influence of habit. Hamlet says to his mother:

> "Refrain to-night,
> And that shall lend a kind of easiness
> To the next abstinence: the next more easy,
> For use almost can change the stamp of nature."

One ethical philosopher has well said, "Do right, and trust to God to make it easy." So it is that many acts become so easy in the doing, require so little effort of consciousness, that they are said to be done unconsciously, or, in other words, out of the ordinary relation to thought in point of time. These acts we may call automatic or impulsive. The constant, modified exercise of any of the muscles will, in the time to come, tend to the same modified exercise under the influence of a comparatively insignificant exciting cause. And thus in all the manifestations of mind, whether they be connected with impressions on the senses, with the result of the processes of thought, or with one's actions as a moral agent, there is a liability to pass partially out of the power of will or motive—for we are using these two words in the same sense—a liability to recur under the influence of what would in time past have been an inadequate stimulus, and to become what may be called involuntary or impulsive. But this is much more speedily done under the influence of disease than in the conditions of health. The infinite variety of the actions that one is called upon, while in a healthy state, to perform, protects the individual from the effects that follow habitual action in one direction. But it can easily be understood that the presence of a delusion must greatly modify many of the relations of motives to conduct; and the same effects will be produced by the influence of unrestrained habit, or of hereditary tendency. So powerful is hereditary tendency that we may be said to inherit ready-made habits; so powerful is it that a father may weaken the power of will,

or weaken those powers by which men judge of motives, in his offspring. It is stated as a fact that Oxford, the regicide, believed that he was St. Paul, and that his grandfather had done the same. An interesting example of an hereditary propensity to steal—which descended from a real thief, who could refrain from pilfering when paid to do so, to his son and grandson—is given in Dr. Julius Steinau's very excellent work on [112] "Hereditary Disease,"[1] and other examples of a similar tendency to the reproduction of morbid propensities will be found in Mr. F. Hill's "Reports on Prisons." We find voices, features, even acquired skill, modified by the past, so that the handwriting of one individual member of a family has in some cases been found to resemble that of some ancestor whose writing he had never had an opportunity of seeing. All this seems to us to explain what we mean by the "depraved impulse," as present in many cases of moral insanity, and what, in this relation, we understand by defective volition. That disease has the power of withdrawing certain acts from the influence of will, and that in many cases it so much incapacitates the individual as to place him so thoroughly under the influence of one set of motives as to make any action arising therefrom rapid and unhesitating, is, we believe, the only true explanation which can be given of those diseased impulses which find place in the minds of the insane; and we are further inclined to interpret the apparently motiveless character which belongs to such impulsive actions as, in truth, due to the strength of the motive to which they owe their existence.

§ 169. **The Psychology of Healthy Choice.**—In this life our course is not a clear one. Duty is often difficult to do. We have the choice of Hercules at every turning point of our life. The more one knows of the possibilities of the future, the more careful will one be in fashioning the actualities of the present. And Shakespeare says:

> "Rightly to be great
> Is not to stir without great argument."

It is to the ignorant that choice is easy: it is to the wise that

[1] P. 19, No. 21. See also Hill on Crime, p. 55.

choice is difficult. A child finds no difficulty in choosing between a bank-note and a lollipop, and from the impulsive way which it grasps at the latter, we think it is uninfluenced by motives, the fact being that it is influenced by the motives of actual enjoyment powerfully, and by those of remote contingency not at all. So it arises that an overwhelmingly powerful motive has, to the eyes of those who are in the habit of connecting choice of motives with struggle, the same appearance as no motive at all. Our idea of choice is the swaying of the scales, not the kicking of the beam by one of the scales; so that we have, in thought, connected actions which spring from a very strong motive with the expression "motiveless," because struggle, resistance, is the sign of humanity in the hands of cause, while yielding is the sign of inanimate matter under similar circumstances.

§ 170. **Irresistible Impulse: Pathology of.**—It may be useful to add one or two remarks as to the pathology of impulse. We are familiar with the quiet, slow, gradual processes of health, and with the more sudden manifestations of disease. We have pointed out that a healthy man makes up his mind slowly. "Think twice" is the rule of wisdom. But looking merely at physical actions of men, we see that these are gradual. Energy flows through their voluntary muscles. In many cases of disease this is reversed. The physical conduct of men is broken. Their actions are "spurts." Energy jerks itself through them. Thus it is in chorea, hysteria, and epilepsy. The nerve force is belched forth into act in entire independence of volition. But what is true with regard to muscles may be true with regard to brain. The ordinary and healthy condition of thought is to follow in the wake of sensation. A man sees something beautiful, and he admires: he sees something menace, and he feels fear: he sees something disgusting, and he experiences loathing. But they are mental epilepsies. In disease, the feeling is independent of the thought. You have night terrors without knowing why you are afraid; feelings of comfort and joy when all outward circumstances would suggest grief and misery. There are, then, discharges of energy through ideas just as through muscles—convulsions of mind as well as of body. And you

have also sudden determinations to act without any idea as to the direction in which the volition is to be directed. Thus it is there are impulses—acts out of all harmony to the thought of an individual, just as a sneeze is dissociated from the conduct of the individual. We find no more difficulty in believing in these sudden diseases, or rather sudden manifestations of disease, than we do in sudden death from heart disease. What we do believe is that a long course of disease is invariably antecedent to such impulsive acts, a long weakening of will, whether we refer to the automatic will which resides in all the tissues and makes them quiet reservoirs of energy, or the conscious will which regulates our conduct and our acts. Such impulses, too, are always out of harmony to the thought of the individual, and it is thus we find mothers kill the children that are dearest to them. But on this very ground their existence in relation to premeditation, to quarrel, to malice, to ill will, is to be denied. Again, such a disease as transitory mania—mania which suddenly appears and suddenly disappears—is, to our thinking, an impossibility. We are glad that although some medical men of eminence hold that a disease may manifest itself in one criminal act, and that such manifestation may at the same time be the cure of the disease,[1] others, with what seems to us truer conceptions of pathology, have denied the existence of such a disease. Thus Dr. Hammond remarks: "The doctrine that an individual can be entirely sane immediately before and after any particular act, and yet insane at the instant the act was committed, is contrary to every principle of sound psychological science. Even in the most striking instances of what is called transitory mania, or morbid impulse, the evidences of preëxistent and subsequent disease of the brain will be found if they are looked for with skill and diligence and intelligence."[2] Again Dr. Gray, another distinguished American physician, remarked: "I am not going to deny the existence of transitory paroxysms of insanity either in epilepsy[3] or in the frenzy of melancholia, or in ordinary cases of

[1] See Dr. Jarvis on Mania Transitoria, Am. Journal of Insanity, vol. for 1869–70. See also Prof. Kraft Ebing, Paper of 1870.

[2] Insanity in relation to Crime, New York, 1873, p. 75.

[3] Whenever we meet with isolated acts of violence, outrages on persons, homicide,

insanity, where paroxysms suddenly arise and suddenly disappear; but until I have seen more than I have yet seen, and until I read something more authentic than I have yet read—authenticated by symptoms—I must fail to see insanity in any case which arises when the premonitory symptoms of the disease run the rapid course of a few minutes, when the person commits a crime and then is well."[1] These, then, strike one as being more cautious and rational opinions with regard to the nature of disease and the real etiology of impulse, than those which have been generally expressed by members of the medical profession.

§ 171. **Characteristics of Impulse.**—What we have said with regard to the psychology of impulse would of itself lead one to suppose that the act which is thus involuntarily caused by a discharge of energy would bear some peculiar relation to memory, and that that relation might be of much use in the accurate diagnosis in this form of disease. This is actually the case, although the recognition of it has not been so general as we should have expected. Our own observation in such cases convinces us that there is always more or less forgetfulness after an act which has been done by disease, if we may use the expression. This is not of course true of delusions, where all the thoughts of the individual are centred on the one idea which, like Aaron's rod-serpent which swallowed up those of the magicians, has devoured the other crowding ideas of life, but it is true of the disease we are here considering. Memory is always retentive if attention has been concentrated. Attention is the true antiseptic of ideas. But in relation to the acts of impulse, attention was not related to them in any way. One has no memory of the processes of digestion, of growth, of circulation, of nutriment, because these do not enter into consciousness, and attention has not been called to them. So in relation to all acts which, although once voluntary, have now become automatic. The

suicide, arson, which nothing seems to have instigated, and when, upon attentive examination and thorough inquiry, we find a loss of memory after the perpetration of the act, with a periodicity in the recurrence of the same act and a brief duration, we may diagnose larval epilepsy. Annal. Med. Psyc. Jan. 1873, p. 162.

[1] Reprint from Am. Jour. of Insanity, p. 10. See also the remarks of Dr. Callender, Reprint, p. 19.

musician cannot call to mind all the motions which were necessary to the production of his performance. The thinker cannot on all occasions recall all the intermediate propositions by means of which he reached his conclusion. So in relation to the acts of impulse, the individual has generally a very defective memory, and the reason for this oblivion is the same as that which we have just indicated in relation to other automatic acts. But again there is another reason for this forgetfulness, which it is of much importance to recognize. A person is in the habit of recovering memories by means of an Ariadne-thread of association. When one thinks of a thing once experienced, he generally remembers it in relation to its cause. If he remembers a sorrow, he remembers the death that caused it. But as we have seen in disease, a man experiences sorrows, joys, fears, or hopes, without any consciousness of an external cause; and as he has been unconscious of them, he cannot remember them. But the very remembrance of the feeling, without a remembrance of its cause, gives the individual an idea of unreality in connection with it. It is not remembered as ordinary reminiscences are recalled. It is not in the anticipated association, and the individual consequently feels that somehow it is more like a remembered dream than a recalled reality. This is true in relation to those impulsive acts to which we have above referred. Another characteristic to be noted in relation to such acts is their relation to time. They are very often periodic in their recurrence. In another place, we have fully considered the organic law of periodicity, and if this physical law can impress itself upon voluntary thought, we should expect to find it impressing itself upon the involuntary actions which are called impulses.

§ 172. **General Remarks.**—[113]We believe that this explanation of an "irresistible impulse" is conformable to all the circumstances which attend their manifestation, as far as they have been accurately observed; and we further believe that, with such an explanation as the above, courts of law would, in connection with the various cases, be satisfied of the existence of morbid impulses; and it would be admitted that persistency of criminal tendency, and the commission of

criminal acts in spite of repeated punishments, and in spite of every human reason to believe that the connection between future acts of crime and punishment would be invariable—all point to the existence of disease. One important point may be noted here. Physiologists distinguish two kinds of action: the one initiatory, the other inhibitory; the one originating, the other controlling. Some are inclined to localize these two powers, which shape conduct and influence all action, in distinct centres. Now, it seems certain that just as the originating centres may be strengthened by indulgence, so may the inhibitory centres be made stronger by habit. A man in ordinary health is tempted, but he has the power to resist. A man in disease may be tempted by some unreal inducement, by some delusional belief, but it does not thereby follow that he is deprived of the power of control. A case which has been brought under our notice will show this. A medical man, who had himself had charge of insane persons, became insane, and entertained some false beliefs and an unfounded hatred of his father-in-law. He confessed to a brother physician that so far had this dislike carried him that upon many occasions he had taken his gun out of a morning and walked over half way to the old man's house with the intention of shooting him, but that somehow he had always thought of Jack Ketch before he got there, and turned back. We have ourselves repeatedly heard insane persons say to those who were about them: "I would kill you if it were not that I would be hanged for it." This indicates that the originating thought is still in the firm harness of inhibitory power in many cases of undoubted insanity, and that the inhibitory power can be strengthened by the fear of punishment. In such cases, it is evident that if a crime be committed, it would be wrong to forego the legal penalty. A few cases are added to show that the real ground for exempting from punishment has not been sufficiently understood, and to illustrate the phenomena of this disease.

§ 173. **Some Cases of Impulse.**—"An only son of a weak and indulgent mother was encouraged in the gratification of every caprice and passion of which an untutored and violent temper was susceptible. The impetuosity of his disposition

increased with his years. The money with which he was lavishly supplied removed every obstacle to the indulgence of his wild desires. Every instance of opposition roused him to acts of fury. He assailed his adversaries with the audacity of a savage, sought to reign by force, and was perpetually embroiled in disputes and quarrels. If a dog, a horse, or any other animal, offended him, he instantly put it to death. If ever he went to a fête, or any other public meeting, he was sure to excite such tumults and quarrels as terminated in actual pugilistic encounters; and he generally left the scene with a bloody nose. This wayward youth, however, when unmoved by passion, possessed a perfectly sound judgment. When he became of age, he succeeded to the possession of an extensive domain. He proved himself fully competent to the management of his estate, as well as to the discharge of his relative duties, and he even distinguished himself by acts of beneficence and compassion. Wounds, law suits, and pecuniary compensations, were generally the consequences of his unhappy propensity to quarrel. But an act of notoriety put an end to his career of violence. Enraged with a woman who had used offensive language to him, he precipitated her into a well. Prosecution was commenced against him; and on the deposition of a great many witnesses who gave evidence to his [114] furious deportment, he was condemned to perpetual confinement in the Bicêtre."[1] Although this case is recorded by Pinel, it seems to us anything but a satisfactory illustration of moral insanity; and it is somewhat strange that it has been quoted in that connection by some more recent writers on the subject. "Strong passions" seem to us all that is made out in the case just quoted; and if that plea is to open the door of a lunatic asylum instead of that of a prison, courts of law may shut their doors. That the strong passions were unrestrained in youth, that a defective education led to careless self-control, that the means of gratifying passions made them strong—just as in a country's economy, plentiful supply strengthens demand—that habit strengthened more and more what tendency had made in clay, seems all that can be gathered from

[1] Pinel, Sur l'Aliénation Mentale, p. 156, § 159.

the facts of this case. The same story might be told of many of those persons one meets each day and never excite a suspicion of insanity. We suspect that the money, of which he had much, and the domain, which was extensive, had something to do with his incarceration in the Bicêtre.

A case mentioned by Hoffbauer[1] better illustrates what we understand by moral mania. It is a well-known case, and we therefore content ourselves by referring to it. We epitomise a case given in an article upon the subject under consideration, in the "Medical Mirror."[2]

W. R—— was twenty-seven years of age. He had been eight times in the house of correction. His father was an epileptic, and he himself had been subject to convulsions when teething, and at intervals during his after-life. He tortured animals, picked out the eyes of a kitten with a fork. He lied and stole. He was expelled from school as too bad to be kept. He afterwards consorted with the worst characters, was drunken, debauched, dishonest. He attempted, or pretended, to commit suicide. He was utterly false and untrustworthy. He delighted in torturing those patients who were, like himself, confined in the lunatic asylum, and who were too weak to resent injury with violence. He was indelicate in the presence of females, and attempted a rape on his mother and on his sister. Yet, with all, he was intelligent, exceedingly cunning, and [115]while he was actually the victim of epileptic seizures, he was prone to feign fits, and did it with considerable ability. In spite of careful watching, he repeatedly effected his escape. Was exceedingly vain; and, in the presence of some persons, seemed to be remarkably devout. He was ingenious in excusing his errors; and, although exceedingly mischievous, was careful to avoid disagreeable consequences. All these facts indicate the presence of disease; and, we are inclined to believe, that the case above quoted is one in every respect typical of general moral mania; and yet it is not one in which, it seems to us, looking at the function of government as we have described it above, even the presence of this morbid state should protect from

[1] Hoffbauer's Médecine Légale, § 126, p. 132.
[2] Notes on Moral Insanity, "Medical Mirror," vol. iv., No. xlviii.

the consequences of criminal acts. In all the circumstances of the case we have partially described, two things are observable: 1. A fear of personal inconvenience, a dislike of ordinary punishments, and many of the ordinary motives of human nature—as, self-aggrandisement, sexual indulgence, the praise of those whose praise is ordinarily thought of value, personal vanity, and the like; and, 2. An intelligence of such a high order as to enable him thoroughly to understand the relation between a found-out crime and its punishment, for he invariably tried to conceal the commission of the criminal act by lies, hypocrisy, and various clever explanations. And either of those two conditions of health seems to us—where no uncontrollable impulse is proved—to indicate a fit object for punishment. And the writer of the article from which the case is quoted, evidently, although a medical man, tends to the same opinion, for he says:[1] "Humane and well-devised punishment must follow all their (the morally insane) misdemeanours: and they must be made to feel that, in certain matters, subjection to a dominant system is an inevitable necessity. The gradual formation of habit is, above all things, to be aimed at." It is quite evident that many such individuals exist amongst us, with a heritage, if not of actual disease, yet of accumulated crime, which is the clay in the hands of that potter, Time, of which insanity is made, who do not restrain their morbid impulses on account of the fear of punishment. But because the law has, by various punishments, failed to make a man honest, to regard him when he again steals as exempted from punishment on account of the number of his crimes—and because it has failed, to do damage to its declaration, by rendering the connection [116] of crime and punishment less invariable, seems absurd. It is just because this consequent and antecedent are not invariably and inevitably connected that some men commit crime, and that those who have a tendency to commit crime through strong passions, habit, or disease, are not restrained. It is true, there are some insane persons whom an invariable sequence will not teach *the* lesson of life, and whom the pain which is the invariable consequent of

[1] Op. cit., p. 739.

violently striking one's head purposely against a stone wall, will not teach to refrain from that act. When such a state of mind exists, whether it arises from imbecility or mania—intellectual or moral—it is absurd to punish. In most of the cases of moral mania which have been brought under our notice, the tendency to sin is, doubtless, due to disease; but it is not so strong that an absolute certainty of proximate suffering could not restrain from the commission of the criminal act—indeed in many cases it is not stronger than the tendency which exists in those persons that circumstances have brought to sin, and that habit has made criminals; and as it is for the latter class that laws are enacted, it seems to us, the former class are co-heirs with them in the advantages to be derived from the infliction of punishment. Another case may be quoted to illustrate this position: it is a case "where, with great natural shrewdness, general information, and gentlemanly manners, where no delusion or incongruity of thought can be detected, there exists an inveterate desire to torment and irritate those around: to enjoy the dissension and disputes which ensue, and to violate every rule of decency and delicacy by obscenities of look, word, and action, *when these objects can be accomplished without detection*."[1] We imagine that the case just quoted, and the following case, which we take from Prichard,[2] prove that in many of the relations of the morally insane to the State, they may, for all the purposes of just governmental discipline, be regarded as sane; and that, in many respects, those who are afflicted with moral insanity must be treated in the same way as those in whom we can only discover moral turpitude.

"Mr. H. P—— had been for many years confined in a lunatic asylum; when, an estate having devolved upon him by inheritance, it became necessary to subject him anew to an investigation. He was examined by several physicians, who were unanimous in the opinion [117] that he was a lunatic; but a jury considered him to be of sound mind, attributing his peculiarities to eccentricity, and he was consequently set at liberty. The conduct of this individual was the most eccen-

[1] Crichton Institution Report for 1850, p. 26.
[2] Cyclopædia of Practical Medicine, Art. Insanity, p. 834.

tric that can be imagined; he scarcely performed any action in the same manner as other men: and some of his habits, in which he obstinately persisted, were singularly filthy and disgusting. For every peculiar custom he had a quaint and often ludicrous reason to allege, which indicated a strong mixture of shrewdness and absurdity. It might have been barely possible to attribute all these peculiarities, as well as the morbid state of temper and affection, to singularity in natural character, and to the peculiar circumstances under which this person had been placed. But there was one conviction deeply fixed on his mind, which, though it might likewise be explained by the circumstances of his previous history, seemed to constitute an instance of maniacal delusion. Whenever any person, whom he understood to be a physician, attempted to feel his pulse, he recoiled with an expression of horror, and exclaimed, 'If you were to feel my pulse, you would be lord paramount over me for the rest of my life.'" "The result has proved," this author goes on to say, "that confinement is not always necessary in cases of this description. Mr. H. P—— has remained at liberty for many years, and his conduct, though extremely singular, has been without injury to himself or others."[1]

§ 174. **Concluding Remarks.**—This is one case, and many others might be collected in which an illiterate jury have, in spite of medical evidence, succeeded in doing the right thing; but it is also a case which shows how very frequently moral insanity is connected with intellectual delusion. Indeed, we are convinced that many observers have not—in their anxiety to prove the fact of a kind of insanity which exists independently of any prominent intellectual symptoms—been sufficiently careful to look for signs of the existence of that which they did not wish to see. Many people, like Nelson—when he was told that there was a signal from the Admiral's ship commanding his return—put the telescope to their blind eye, and say, "I cannot see any-

[1] See also a case given by M. Devergie in the Mémoires de l'Académie Impériale de Médecine, tome xxiii., p. 1, Paris, 1859; and Bulletin de l'Académie Imperiale de Médecine, tome xxiv., p. 566.

thing." So Dr. Ray[1] quotes the case of the Earl Ferrers, who was executed in 1760[2] for the murder of his steward, in illustration of what he regards as moral insanity. Dr. Ray does not, in the [118] description he gives of the condition of the accused—in which he asserts that the disease was in a more advanced condition—state that it was proved that his lordship was occasionally insane, and incapable, from his insanity, of knowing what he did, and of judging of the consequences of his actions. He labored under the delusion that his relations and friends had formed a conspiracy against him, and he regarded Johnson, his victim, as an accomplice. His conduct was of such a character as to convince those who knew him of his insanity. That the verdict of guilty may have been erroneous, and that the sentence and execution may have been inexpedient, is true, but that the accused labored under moral mania seems to us false. In another place, we point out the relation of those afflicted with intellectual mania to the State: here we would—while we praise the caution of our courts of law in hesitating to recognize moral insanity, and point out that, from the rarity of cases in which this disease is unaccompanied by very prominent intellectual symptoms, very little injustice has been done, in consequence of the law's unwillingness to recognize this kind of insanity—censure the dogged persistence of lawyers who will not, even in the present state of medical psychology, and with the amount of evidence which has been accumulated, admit that there can, or ought to be, a recognition of such a form of disease by our criminal law.[3]

[1] Medical Jurisprudence of Insanity, p. 119.

[2] See Hargrave's State Trials, vol. x., p. 478.

[3] See further on this subject Kraft Ebing's essay in Friedreich's Blätter, Sept. 1871; Lehrbuch des Deutschen Strafrechts, by Dr. Berner, Professor of Jurisprudence in Berlin University, Leipzig, 1871; Morels Traité Theorique des Maladies Mentales, vol. i., p. 310; Griesinger on Mental Diseases, Syd. Soc. ed., § 140.

CHAPTER IX.

PARTIAL MORAL MANIA, OR MORAL MONOMANIA

§ 175. **General and Special Insanity considered.**—[119]Although it is difficult to see how one set of mental operations—as, for instance, those which go to determine a difference between right and wrong—can be affected with disease while in all other respects the mind is sane, still it is a fact that a man's relations to external nature may be distorted in so far as one series or class of acts are concerned, while in other classes of acts or impressions those relations may be in a perfectly normal condition. A man may be blind without losing the use of his ears. But still it is not altogether correct to say that a man can be morally insane while at the same time he is intellectually normal. For, as what we know of mind is only thought, we cannot regard a mind which always thinks wrongly with respect to certain matters, although in other matters its process may be without error, as in its intellectual wholeness complete.

§ 176. **Moral Monomania.**—I now propose to consider a class of cases in which even a more limited species of acts is affected by disease—a class of cases in which only one or two of the social relations of the individual are interrupted by the presence of the abnormal conditions of brain. Although it is difficult to separate a man's feelings from his thoughts, it is not difficult to make a distinction between various desires or passions in relation to their objects. Thus, if we found morbidity only manifested in relation to the appropriative tendency in human nature, it would be reasonable, for the sake of convenience, to distinguish such a manifestation of disease from that in which the tendency to destroy one's own life was found to be the most prominent mental

feature. It is really madness in relation to the same mind and thought, whether its symptom be stealing a handkerchief or cutting one's throat; but as there are different kinds of skill acquired by different parts of the body, so there are different propensities [120] acquired by mind. Skill is the direction of energy to the educated part; partial moral mania seems to be the direction of morbid energy, or energy manifest under abnormal circumstances, through certain tendencies of disposition. And the most convenient means of classification is presented by the similarity of the most prominent features or symptoms of the disease in different cases, as it is these features and their object that call attention to that part of the disposition which is primarily affected.

§ 177. **Disposition and Character.**—The disposition is just the stereotyped edition of a man. While a man is young and under favorable circumstances, his tendencies are only movable types. If we say a man's disposition is good, it is that the circumstances of the past have biassed him—like a bowl—to run over this green world in a direction we think heavenward. This is disposition in the lump. But we all know how infinitely the various rooms of the house—disposition, so to speak—vary in different individuals. We find one man liking solitude and the great lessons it teaches, while another seems to enjoy his neighbor's elbows in his side as he is jostled in the market-place. One man has great ventures forth in the waves' hands, and prays that the wind may bring home his ships, and that his coffers may be at their golden flood-tide. Another man lives in the shadow of great quiet hills, with nothing but books for friends, and would rather hear the babble of the streams than the clink of all the coins in the world. One man imagines that

"To breathe is not to live,"

while another man thinks that "well fed" is the acme of happiness, and never to want, the highest perfection. It is the sum of all a man's tendencies to the external that we designate his "disposition;" and when we use such words as "miser," or "glutton," we mean to express, with as much exactness as one word can, the whole disposition of an indi-

vidual. To say that a man whose disposition impels him to choose what is bad rather than what is good, is a bad man, and a stupid man, seems to be warranted by the dictionary meanings of words. We see many who choose the evil and eschew the good every day of their lives, and we see others who prefer the good of the spirit to the good of the body. But liberty is an excellent thing, and if we were all compelled by law upon all occasions to do well we would make the millenium a seven months' child—a consummation not to be desired. So we are all allowed to choose what is bad, if [121]we prefer it, so long as our choice neither directly nor indirectly tends to injure other people. When disposition would impel us to the choice of something which belongs to another, and, when we appropriate the article to our own use, law steps in, and, for the reason that it is convenient that folk should be able to possess without molestation what belongs to them, punishes us, in order to prevent the formation of such unsocial (in the wide sense) dispositions. Such is the principle of our law, and whether the disposition is a result of disease or not, so long as punishment is calculated to restrain, so long should it be had recourse to.

§ 178. **Diseased Disposition and Exculpation.**—But it is true that a disposition may get too strong for a man. He may, even when the strongest reasons for refraining from a certain act exist, (*e. g.* the presence of witnesses and the certainty of punishment,) be unable to restrain his propensity. And where such a fact can be satisfactorily proved, it seems to us, after careful consideration of the subject, that the individual should be held irresponsible for such acts.

§ 179. **Partial Insanity considered.**—Partial insanity, then, may, according to medical men, be traced to an abnormal increase of vital energy in any part of the mental organism, which will probably be manifested in an excessive activity of that state of consciousness with which the part affected is connected, or, what seems to us more probable, will, in all likelihood, manifest itself through those channels of mental life in which the greatest amount of mental energy has been wont to flow, or, in other words, be directed by the disposi-

tion of the individual. In relation with this statement it must be remembered that a man's disposition is not always an open book from which a runner might read, that it is not always formed by overt acts—although in many cases these are the scaffoldings of disposition—but is often built up in secret by the coral insects of thought. It must be remembered also that a disposition is not omnipotent, and that many wise men constantly act in direct opposition to the tendency of their nature; but where the true disposition can be ascertained it will, we imagine, be found the channel through which the excessive mental energy generated under the influence of disease will flow. It is true that not unfrequently the disease seems rather to change the character of the individual, and a man that was scrupulously honest before, becomes a thief; a philanthropist, a persecutor. But these facts, the truth of which we admit, only bear out our statement, for it seems [122] to us a law of the manifestation of energy that its excessive flow under the influence of disease, through a channel in relation to which it is excessive, is productive of a result contrary to that which the ordinary healthy passage of energy would be expected to cause. If fifty people try to get through a doorway suited for the passage of one person at a time, not one gets exit, and that although the door is wide open and there are fifty persons wishing to get through. So it is with energy. As long as the disposition-channel—to make a phrase—is sufficient to allow the exercise, say of generosity, it manifests itself in good works; but when it has, owing to the excessive activity of mind, become too limited, there is a display of excessive meanness in all the actions of the individual, so that our assertion that it is the disposition of the individual that influences the manifestation, and gives a character to the symptoms, is borne out by facts.

Part I.—Kleptomania.

§ 180. **The Idea of Property.**—The idea of property, as we have it in our times, was not built in a day, any more than Rome was. That it has been built seems certain. In the

first instance it may have been acquired from the undoubted possessory feeling a man has with regard to his own body. A man would recognize his hands as his own, and from that rudimentary notion of self-possession anything that could minister to the welfare of self would, in time, become associated with the idea of property. Food would probably be that with which this advanced idea of property would be connected. But the real development of the notion of "mine" must have arisen from the remembrance of some want in the past, and its satisfaction in a time nearer the present, and from a sufficient appreciation of the course of nature to believe that such a want might arise in the future, when its satisfaction might be difficult. The man who really first had property was he who thought, "I am not hungry just now, but I may be in time to come. I have more food than I can eat just now, and I may not have enough to eat in time to come." But he found out that it was necessary to remember where the food was; then he found [123]it necessary to hide the food and mark the place, so that he might find it again; and it was this fact of its being hidden that was the law that gave him the true feeling of ownership. But if food was "owned," and men began to think that possession gave a right to property, why should not the implements with which the food was procured be a subject of property? The hunter transferred the skin to his back or stretched it over a pole to shelter him, and so property increased. Then began the differences of the language of property. At first property in food only gave the pleasure of satisfaction of appetite, and then of taste; then when the hunter came for it again he had the satisfaction of feeling that by his ingenuity he had "earned his blessings," that he had done better than his neighbors by making the present live, as it were, on the past; then came pride in the shape of the instrument, in its ornamentation, in the glossy hide, in the antlers, in his house or wigwam, in the cleverness of his bartering exchanges, and in the stores he had laid up against the time to come. And so his feelings ramified, as it were, so the idea of property grew and strengthened, for feelings are strong in proportion to the number of actual or possible associated sensations. Then

came money! and it was looked upon as valuable, not in proportion to the one real pleasure which it could procure, but as equal to all the possible pleasures which it might procure, and hence to be regarded as indefinitely advantageous. It is in this way that the present idea of property has been formed, and in this way has the moral condition of man been raised—first, by the enlargement of his sphere of activity; second, by the belief in the security of the future. The enlargement of the sphere of activity is of the utmost importance to humanity. It is good genuine work, be it with hand or head, that best forms character; and in order that a man may work he must believe in a future for which the present labor is providing comparative comfort. It is this anticipation of a future which is most characteristic of humanity, which best distinguishes man from the lower animals. Is it not this anticipation that opens the gate of heaven to us—is it not the hopes and fears which come with this expectation which make night hideous?—

> "And we fools of nature,
> So horribly to shake our disposition
> With thoughts beyond the reaches of our souls."

[124] Is it not this that makes man bend his knee to Him who formed the past and the present and the future—a world that is ours just now, and a world that may be ours hereafter?

§ 181. **Property and Law.**—It is only the lower animals that live entirely in the present, and the present is always small. It is like a room, and humanity has made windows in its walls by which it surveys both the landscapes of eternity, while the brutes are content to live in the little close darkness of to-day. The present is great only because it can be made to contain glimpses of the past and of the future. Property, then, is possible only to those who have a future. It is something only in relation to time. But property must be respected by others than the proprietor, and in order that it may be respected it must be distinguishable. It must also be transferable, else property would be valuable only to a limited extent; and the transference of property must be safe, and ought in every country to be easy. And so from the rude

beginning which we have described we arrive in time at a stage where there is a necessity for law, or "a rule of civil conduct prescribed by the supreme power in a State, commanding what is right, and prohibiting what is wrong."[1]

§ 182. **Property and Theft.**—We might, if time permitted, trace the metaphysical relation of this idea of property, and show that all property was connected with the thought of the will of an individual being deposited in a thing, and that all transference of property consisted in the withdrawal of the will of the owner from the thing which is conveyed, and that consequently theft consisted of the violent substitution of one will for another, and that in that way, as it was a violation of the free will of another, it was a wrong. But it is unnecessary to go further into the question as to the formation of the idea of property, or of the means which have been taken to render the acquisition and the subsequent possession of property secure. Enough has been said above to enable us to explain the connection of the idea of property with certain diseased conditions which may be brought under the notice of the medical jurist.

§ 183. **Theft in relation to Disease.**—After property has been acquired, after the municipal law has forbidden theft and prescribed penalties in case the established rights of property should be violated, many persons are still found to be stupid enough to attempt to deprive their neighbors of their goods by means of fraudulent taking. But there are others who, through the disordering effects of disease, fail to perceive the relation in which they stand to the property of another, who fail to perceive the real connection that exists between owner and goods, to the exclusion of other individuals, or, even while they do understand the whole gist of the idea of property and possession, are, from their inability to be [125]influenced by ordinary motives, which are the points of humanity's compass, unable to refrain, from the mere pleasure which arises from the act of appropriation.

[1] "Law" is defined as "anything laid down, s. c., as a rule of action—a rule imposed, fixed, or established, decreed or determined."—Richardson's Dic.; 1 Blackstone's Commentaries, p. 44.

§ 184. **Avarice and Hoarding.**—Very early in history we find instances of stupid hoarding under the influence of disease, and soon we find theft as a symptom of insanity. That avarice which sits

> "Upon a camell loaden all with gold:
> Two iron coffers hong on either side,
> With precious metal full as they might hold.
> And in his lap a heap of coin he told;
> For of his wicked pelf his god he made,
> And unto hell himself for money sold;
> Accursed usury was all his trade,
> And right and wrong in equall ballaunce waide,"

is compatible with health, in the ordinary sense of the word, may be true; but that such men as John Elwes, who at night was heard in his chamber as if struggling with some one, and saying, "I will keep my money, I will! Nobody shall rob me of my property," and who lived in wretched poverty, although he died worth £800,000; as Thomas Cooke, who never did a generous act, except dying and leaving £127,205 Three per Cent. Consolidated Bank Annuities for some one else to use; or as Daniel Dancer, the history of whose life and littleness is as well known as the story of his great wealth,[1] are in perfect health, in the truer and deeper sense of the word, we would emphatically deny. But the question of hoarding, save in so far as it is connected with theft, does not properly fall under our notice in this place.

§ 185. **Theft not necessarily connected with Insanity.**—Notwithstanding what some extreme thinkers say, we are compelled to believe that larceny, which is "a wrongful removal" (taking and carrying away) of the property of another, whether it be effected without consent or by consent obtained by intimidation or fraud, so as the owner consent not in the latter case to part with his entire right of property, but with the temporary possession only,[2] is not necessarily connected with insanity. But, at the same time, we must admit that theft may become a symptom of, and often is indulged in, in consequence of, morbid mental conditions.

[1] See Henry Wilson's "Wonderful Characters," vol. ii., p. 88.
[2] Cr. L. Com. 4th Rep. p. 50.

§ 186. **Where Theft is associated with Mental Disease.**—No difficulty occurs where kleptomania, or the propensity to [126]steal, (using the word propensity in the meaning we have attached to it by our explanation of impulse and tendency,) is only a symptom of well-marked mental disease. That it is very often associated with general mental aberration will be believed by all who have had even a limited experience of insanity. We have ourselves seen this propensity manifested in several cases of mental disease under treatment in asylums, and been able to distinguish the thefts of these insane persons, who were at the same time insane in relation to theft from the larcenies of those insane persons who stole criminally or were influenced by exactly analogous motives to those which actuate the common thief. In many instances, epileptics are found to be addicted to theft. Dr. Erhardt mentions several cases in which persons laboring under this disease have been possessed with an irresistible desire to appropriate to themselves whatever they could secretly lay their hands on, and that without regard to the value.[1] Such thefts not unfrequently arise in connection with general paralysis of the insane. In a late number of the Journal of Mental Science,[2] there is a record of no fewer than six cases of general paralysis, admitted during four years into the West Riding Asylum, in which it appeared that the commission of the crime of larceny, with which each had been charged, was a manifestation of the earlier mental symptoms of this disease. This association of theft and disease is not difficult to explain, when it is remembered that the general paralytic has exalted ideas of wealth, unbounded ideas of possession, and that together with these ideas there is a well-marked tendency to acquire. We ourselves once saw a man convicted at Quarter Sessions for stealing two fowls, and when he was asked if he had anything to say, he began to talk with thick utterance of 50,000 houses at Wigan and money in the bank. He was accordingly sentenced, and some months afterwards it was found necessary to remove him from the gaol to the asylum. He was both at the date

[1] Ueber Zurechungsfähigkert der Epileptischen.
[2] For January, 1873, p. 536.

of his conviction and his transference laboring under general paralysis. We quote the notes of three of the cases referred to.

§ 187. **Theft arising from General Paralysis: Cases of.**—A. B——, admitted April 24th, 1872, with well-marked physical symptoms of general paralysis, and exalted ideas: such as that he was the greatest and tallest man in the world, and had begotten 16,000 children, etc. *History.*—About five months before admission, patient was committed to gaol for larceny—stealing several gallons of oil—and he remained in gaol up to the time of his removal to the West Riding Asylum. Whilst in prison, he was wet and dirty in his habits. The first symptoms of insanity appear to have come on about a month before he committed the larceny. He had always been respectable and honest before, and not addicted to intemperance. He is getting rapidly worse and is now in the last stage. C. D——, admitted April 2d, 1870, with well-marked physical symptoms of general paralysis, being also very much demented, and having a voracious appetite. Fifteen months before admission, he stole a piece of cloth from the —— Railway Station, and being convicted of the theft, was imprisoned in the —— House of Correction for three months. On and after leaving the prison, he led the life of a vagabond, and went about the streets picking up rubbish, until at last his conduct became so strange that he was taken up and certified. There is no history of intemperance or previous crime. Three years previous to admission, he fell from a building and injured his head, and after that became unable to work. He is now in the last stage, and cannot live long. E. F——, admitted March 12th, 1869, with well-marked physical signs of general paralysis and exalted ideas: such as that he had £8000 in the bank, etc., having, not long before admission, been sent to prison for stealing nuts. There is no history of intemperance or previous crime. He has progressed slowly since admission; but has recently had several epileptiform attacks, and is now getting rapidly worse, so that it does not appear that he will long survive.[1]

[1] Journal of Mental Science, Jan. 1873.

§ 188. **Theft in relation to other Diseases: Cases.**— [126]Thus, in the case of Renaud, which is quoted by Marc,[1] no difficulty could have arisen. The patient's ideas seem to have been very limited, indicating the existence of imbecility. The conclusion of the commissioners (MM. Denis and Marc) who examined him, was: "1. That his moral faculties were so feeble as to constitute a state of imbecility, which, however, did not preclude a certain degree of cunning when he delivered himself up to his propensity, or when he endeavoured to deny the acts which arose from it. 2. That it is exceedingly probable that Renaud experienced at times maniacal excitement, and it was especially in this exalted state that he twice attempted theft. 3. That in any case the mental condition of this individual did not appear to allow of the supposition that he had that degree of discernment and moral liberty which forms a necessary condition of criminality." An interesting report on a case of mental derangement with kleptomania, by Dr. Max Mauthner, is printed in the second volume of the "Medical Critic and Psychological Journal," which, although it is too long to quote, throws some light on the subject under consideration. Prichard mentions a case in which the wife of a man of large fortune was in the habit of stealing upon all occasions when she visited shops for the purpose of purchasing. In this case paralysis and softening of the brain existed. So inveterate was the habit that the husband, as he could not shape his wife to do right in conformity with opportunities, tried to shape the opportunities to the disposition of his wife, and went to reside in the country. The case of L. H——, who was confined in a lunatic asylum, and which has not as yet been reported, will further exemplify this class. She was extremely irritable upon certain occasions, but under ordinary circumstances was exceedingly morose. Her face was fixed in a "puckered" frown. She was, however, well educated, and could converse rationally upon many subjects. She was suspected of a morbid desire to acquire and hoard up, and upon a search being instituted fifteen bags were found concealed about her person. The number of articles contained in those fifteen bags (or

[1] Marc, De la Folie, vol. i., p. 170.

those of them that were minutely examined) was 1182. Most of [127] the articles were utterly worthless. We may mention some of them. There were 104 fragments of paper, 82 sewing needles, 18 gloves (mostly old,) 12 moulds for wax leaves, 19 buttons (of various kinds,) 60 feathers, 8 parcels of dried flowers, 4 pills, 3 fragments of dried fish, 138 fragments of ribbon, 9 bottles, 61 lozenges, etc., etc. In such cases, where the habitual theft is only a symptom of well-marked mental disease, little difficulty can arise.

§ 189. **Theft in relation to Delusion.**—Where the individual who steals labors under a delusion, either that the property really belongs to him (as is very frequently the case when an individual labors under general paralysis in one of its stages,) or that it has been stolen from him, and that he is only exercising the legal right of recaption, or that he has been commanded by God to take possession of certain articles, courts of law will not hold the individual responsible for his acts of theft, but will exempt him from the punishment declared by law. Such cases evidently fall within the rule of law stated in an earlier part of this work, viz., that if an accused person labor under "a partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real."[1]

§ 190. **Theft-Madness: Cases of.**—So far, then, there is no difficulty or uncertainty, but in those cases in which there is no other symptom of insanity except this diseased propensity to acquire property—which is very frequently accompanied by the hoarding propensity, showing that it is intimately connected with the true primitive idea of property—where the theft is the only sign of the presence of morbid conditions, the questions as to whether disease is the exciting cause of the larceny, and if so, whether it should be regarded as exempting the individual from punishment, are much more difficult of solution. That such cases do occur is certain. A clergyman, who occupied a very excellent posi-

[1] Broom's Commentaries, p. 874. See 10 Clark & Finnelly, Reports, 210, 211; Reg. v. Oxford, 9 Car. & P., 525; S. C., Townsend's St. Tr., vol. i., p. 110; ante, p. §

tion in Edinburgh about forty years ago, who had distinguished himself by his learning and piety, and who, to use a "stock" phrase, was universally respected, was in the habit of stealing Bibles, and nothing but Bibles. He manifested no other symptoms of insanity, and when questioned as to his conduct excused his acts on the ground that it was necessary to propagate the gospel. Well, it may not have been [128] so mad an idea after all to think that theft of Bibles was calculated to do God service. How many people, sane enough withal, have attempted to propagate truth with a sword, as if human hearts needed to be ploughed before they would yield a harvest.[1] "There are persons," says Dr. Rush, "who are moral in the highest degree as to certain duties, but who, nevertheless, live under the influence of some one vice. In one instance a woman was exemplary in her obedience to every command of the moral law except one—she could not refrain from stealing. What made this vice more remarkable was that she was in easy circumstances, and not addicted to extravagance in anything. Such was the propensity to this vice that, when she could lay her hands on nothing more valuable, she would often at the table of a friend fill her pockets secretly with bread. She both confessed and lamented her crime."[2] A case came under our own notice which has many features in common with that just quoted. Mr. M—— was an individual of high rank. He was the owner of an excellent estate, and was as wealthy as most of his neighbors in the county in which he resided. He was never suspected of being insane, and the only evidence of mental unsoundness that could have been obtained was a confession upon the part of some of his servants that he was "sometimes peculiar." Yet this gentleman was in the habit of appropriating "towels." He invariably, when visiting or on a journey, packed the towels he found in his bedroom in his portmanteau. And when he returned home the stolen articles were, by *his own directions*, returned to their real owners. Marc mentions the case of a young lady of rank

[1] An interesting case of a book-stealer will be found in the 5th vol., 2d series, of the Annales Médico-Psychologiques, p. 666. Some cases of kleptomania will be found in the same journal for April, 1855.

[2] Medical Inquiries and Observations, vol. i., p. 101.

who was addicted to stealing handkerchiefs, gloves, and the like. She mourned over her propensity, wept, repented, and stole again. There was no symptom of any impairment of intellect.[1] Victor Amadeus, King of Sardinia, was in the habit of stealing objects of little value.[2] And an unpublished case has come under our notice where the propensity [129] to acquire by theft manifested itself only in relation to pins. The case mentioned by Prichard is well known, where the individual would not eat unless the food was stolen, so that his attendant had to humor his appetite by placing his food in a corner, where it seemed hidden, but could be purloined without difficulty.

§ 191. **Theft-Madness considered.**—These and many other cases which might be quoted[3] show that theft may be the only symptom of disease, for surely we are entitled to infer the presence of mental alienation in a case where the motives to theft are so obscure, so unlike those which ordinarily govern the actions of men, as to defy all predication of an individual's action from the ordinary experience of the conduct of mankind. That where a clergyman, who is in every other respect strictly conscientious, who is guided by an earnest desire to comply with the commands of a strict code of duty, steals Bibles, and nothing but Bibles, when he steals them with a view to disseminate religious doctrines, one of the most imperative of which is "Thou shalt not steal," that we should regard such a person as insane with respect to that act, seems to us a necessary consequence of thought. That a gentleman of rank and fortune should steal linen from his friends and hotel-keepers, and that subsequent to the theft he should command their return, seems to us sufficient evidence of morbid mental conditions. The relation of such individuals to the civil and criminal law of the country in which they reside is a question which will be considered in a subsequent chapter, and the answer to which may be surmised from what has already been said. But in the meantime we are considering whether there is a marked con-

[1] Marc, vol. ii., p. 254.
[2] Marc, vol. ii., p. 254. See other cases in Marc, pp. 355, 262, 264, 255, vol. i., 308.
[3] Several cases given in Gall on the Functions of the Brain, vol. iv., p. 140.

dition of mind which in its relation to circumstances manifests itself solely in connection with the idea of property, and we are of opinion that the cases quoted above, and those which have been referred to, prove that such is the fact.

§ 192. **Kleptomania as a Premonitory Symptom of General Insanity.**—To show that it may exist as a premonitory symptom of a more serious disease, we may mention the case given by Fodère.[1] It is that of a servant in his own family, who could not help secretly stealing from himself and others articles even of trifling value. She was, at the same time, modest, intelligent, and religious, and was aware that she did wrong. He placed her in [130]an hospital, considering her insane, and after apparent restoration and a long trial he again took her into his service. Gradually, in spite of herself, the instinct again mastered her, and in the midst of an incessant struggle between her vicious propensity on the one hand and a conscientious horror of her condition on the other, she was suddenly attacked with mania, and died in one of its paroxysms. A similar case is mentioned by Morel.[2] "I was once able to establish the non-responsibility of a patient who had stolen in church the ornaments and the most insignificant objects of ceremonial, and who presented no other symptom of disease than a marked state of congestion, great self-content, and a silly laugh. The patient had no delusion: there was only a great intellectual weakness, and the most complete indifference as to the fate which justice would award. Only three or four months after his acquittal, an attack of acute mania with delirium of grandeur, trembling of the tongue, and other symptoms of progressive paralysis, justified my prognostic." And a case is given by Prichard of a gentleman of fortune who resided at Scarborough, and who, amongst other peculiarities, was in the habit of stealing any articles of no value to him, and making little use of them afterwards, who died of general paralysis.

§ 193. **Necessity for Distinguishing Kleptomania from Sane Theft.**—Yet it is necessary clearly to distinguish be-

[1] Traiteé de Médecine Légale, f. i., p. 237. Quoted in Ray's Medical Jurisprudence, p. 129.

[2] Traité des Maladies Mentales, p. 410.

tween such cases and between thefts properly so called. We are far from admitting that every one who steals is a kleptomaniac: we do not even go so far as to assert that every kleptomaniac should be held irresponsible for his thefts; and we assert that in all cases where theft is the sole symptom of the disease, the individual should be held, in every respect, responsible for the commission of every other crime except that of larceny.

§ 194. **Bungling Execution of Crime no Proof of Insanity.**—Several rules may, however, be given for the detection of real disease as the exciting cause of the criminal act. We would caution medical men and other persons who have to deal with such questions from paying too great attention to the existence of some stupidity in the execution of the crime in question as a proof of the existence of insanity. This is too frequently done. People have got into a habit of using the word "insane" upon occasions which are far from being sufficiently adequate to warrant its use. Folk say of a neighbor, if he does some act which they consider foolish, "He must be mad." [131]And from this somewhat wholesale importation of the word into ordinary use, the meaning has become somewhat less definite. Because a man leaves a knife with his name upon it lying beside the victim's throat that it has just cut, all the people cry, he is insane. Because a man who murders his neighbor appropriates his clothes, and within a few days after the commission of the offence pawns the dead man's property, every self-constituted judge pronounces the man quite mad. Is it not the fact that, unless the criminal did some foolish thing, the commission of the deed never would have been associated in thought with him? Is it not a fact that all the inmates of our prisons indulge, not in repentance of the crimes for which they are incarcerated, but in vain regret over some little bungled circumstance in connection with the act on account of which they are undergoing sentence?—not saying, "Would I had never done the deed," as a true man ought to say; but saying, "If I had not left the door open, if I had not dropped my hat, if that man had not heard his screams." But are such circumstances to be taken as proof of the existence of insanity? There are very

few who are not blinded by the rules of what they think a science, who would advance such a proposition.

§ 195. **Unusual Circumstances in connection with Crime not a Proof of Insanity.**—Neither is the association with the crime of one or two unusual circumstances to be regarded as an indication of insanity. An individual of the name of Campbell, who resided in a northern town a good many years ago, was proved to have stolen various articles. It was also proved that the articles had been stolen with the view of supporting a mother, who was entirely dependent upon the exertions of the accused; and, further, it was ascertained that upon one occasion, when crossing the churchyard in the dreary dark of a winter nightfall, while upon his way to commit one of the crimes with which he was charged, and being wholly unconscious that he was observed, he knelt down and prayed earnestly for a blessing on his undertaking. Sympathy was excited—the man stole for his mother, and he prayed to God to bless him while stealing—he must be mad! But, nevertheless, Campbell was hanged. And although the punishment by death for the crime of theft seems to be unwarranted by any law of God, of nature, or of expediency, which ought to guide a legislature, it seems to us that the exemption of the accused from all punishment upon the ground of insanity, as proved by the facts above stated, would have been ill-advised. Many individuals day and night use this great engine, [132]prayer—the lever of the moral world—to hoist them up in the social world. Many people pray night and morning for Heaven's blessing upon acts which every Balaam prophet of our time has declared shall be cursed. What a marvellous revelation it would be if the thoughts that run through men's heads, or well over their lips, when they are on their knees, were made known. Surely a man with a mistaken idea of morality is not to be thought mad. A man who thinks that the end will justify the means, and who prays that the means may be blessed because the end is worthy of God's blessing, is not to be looked upon as a dement.

§ 196. **Uniformity in Character of Crimes not always Proof of Insanity.**—Neither is it well to decide the question of insanity or crime, as taken in connection with theft, simply upon the fact that the individual has only been in the habit of appropriating one kind of article. When such is the case the question ought to be considered in relation to the individual's capacity, so far as opportunities went, to steal any other kind of articles. An old woman, Nickie Frizzel by name, lived in the castle-crowned town of Stirling some fifty years ago. Boys, whose imaginations helped to the conclusion that a crutch and nut-cracker jaws were the truest attributes of a witch, looked upon her as "ower grit wi' the Diel." But even friends of the Devil must die, and Nickie Frizzel paid her little debt of nature when it was overdue by some years. She died, and her house was searched. Many articles were found in her possession which had come into it by the back door of theft, and not by the front door of purchase. But the fact which excited most curiosity was the discovery of a washing-tub full of "peries," or peg-tops, which had, it was surmised, been stolen from the boys as she passed on her daily rambles. No wonder they thought her a witch! But the discovery of all these peg-tops does not convince us that Nickie Frizzel was *non compos*. But instead of saying at length who ought not to be looked upon as mad, even though they steal, we had, perhaps, better say who ought to be considered as of unsound mind under such circumstances. The positive is generally a shorter road than the negative in such cases.

§ 197. **Distinction between Sane Theft and Kleptomania: What should be had regard to.**—The means, the position, the rank of the individual, should be taken into consideration. We know that poverty and want are, under ordinary circumstances, incentives to procure food or money in the most accessible way, which for the poor is not unfrequently by theft. If hunger gnaws a man, it would be a severe moralist who would censure the appropriation of food. Man seems to have a sort [133]of right to live, as much as he can have a right, when standing in God's presence; and when that right is menaced by undermining hunger, there is at

least some excuse for theft. But the law is to prevent theft, and the law properly looks upon want as the most powerful incentive to honest work, and not to dishonest pilfering. Although it should always lead to industry, and not to dishonesty, it does not always do so. The temptation to steal is great. It is so easy, and does not look very wrong: the man you take from has enough and to spare, and you well-nigh perish with hunger. Thus it is that poverty is a real inducement to commit crime. Sad though it be, it is true! Now, if we find a man of wealth appropriating to himself some article that, in comparison to his means, is of little value, we are surely warranted in supposing that his motive is somewhat different from that of the man to whom the same article or sum of money would be, as it were, life, and that "chance" which opens the world's door to man. It is certain that motive is to be judged as much by the position of the person wishing, as by the object wished for. What is a crust of bread after a good dinner?—what is it *not* after a long fast? So we say that the position and means of the individual suspected of laboring under kleptomania are to be carefully considered. And not only his social position, but that "position" which is his entire relation to the external world. An old copper coin, utterly valueless to anybody except to a boy, who might take it to play buttons with, would, in the eyes of an antiquary, be, as it were, the nucleus of a hundred pleasant feelings, and in that way have value in his eye. For, as Shakespeare says:[1]

"What is aught, but as 'tis valued?"

In this wide sense of the word position, a man's rank, his circumstances at the time, his relations to the individual stolen from or to any individual who might possibly be suspected of the theft, the circumstances of the theft—for the manifestation of cleverness or skill in the perpetration may be a perfectly healthy motive inducing to the crime—must all be considered. But if, as in one of the above-mentioned cases, an individual steals towels, and no ordinary motive likely to influence him individually or a healthy person cir-

[1] Troilus and Cressida.

cumstanced as he is, can be discovered, there is a strong probability that the individual stole in consequence of disease.

§ 198. **The Value of the Article to be considered.**— [131] The value of the article taken should be ascertained. In many cases of true kleptomania the value of the article stolen does not seem to be of much importance. To the true thief the value is all important. Before going further, we would say that these tests altogether form a net which will catch the thief and allow the insane to go. Not one of these will alone be sufficient to decide the question of sanity or insanity, and in many instances they may altogether fail. With regard to the value, the case[1] of the lady who only took pins and concealed them in the hem of her dress is certainly illustrative. And we may refer the readers to the case of L. H——, mentioned in an earlier part of this work, and to the case of the lady who stole bread, which we quoted on the authority of Dr. Rush, as further showing that in very many cases the mere morbid desire to become possessed of something is so strong as to make the choice of the article according to the ordinary standard of value a matter of no importance. It is strange that the morbid desire to acquire should in many cases be limited so as to operate only in relation to one class of objects. But we generally find, if we choose to seek, the type of the same law in the manifestations of disease that is to be found in the actions which are the ordinary outcome of a state of health. Men's desires always "clot," as it were. They live in the light of gratification and they grow to that light. Men's desires have to be cut by the cloth the world gives them, and resignation is the obsequy of desire. We have to go without many things we want, and the inevitable is a good argument against our beating ourselves against the immovable bars. But education and birth, and all a man's circumstances, shape a man's desires until his mind is like an island with many long peninsulas running from it, one seeking the south with its summer and flowers, the other the north with its fierce winds and dreary snows. Men's minds,

[1] Reports Crichton Institution.

in so far as desire is concerned, differ infinitely. One man wants fame, another money, another love. One longs for a life in town, another for a life in the country. And so, as we narrow the sphere, one man will read no books that have not to do with the absolute, while another will read nothing but tales of how bad people were converted and turned out of the broad path into the narrow one. One man will have nothing but diaper-patterns for his carpet, while another glories to be walking over worsted flowers and ferns. If such limitations are [135]compatible with health, we should expect in many cases to find still narrower pursuits under the influence of disease. If men who have the means of collecting many things concerning which human interest might be felt, devote themselves to the collection of postage stamps, why should we wonder that others, under the influence of disease, while the propensity to thieve gives them the means of obtaining many things, the possession of which is fraught with pleasure, should have all their energies directed to the acquisition of pins or table-cloths?[1]

§ 199. **The Precautions taken in relation to the Theft.**— The precautions taken by the individual will occasionally throw light upon the question as to whether disease is present or not. Some kleptomaniacs steal openly: they make no attempt at concealment. But cases do occur where much ingenuity is manifested upon the part of the individual to conceal the act from the knowledge of others. The occasions of the theft will have some bearing on the question in connection with the history of the individual, the probability of insanity as judging from the existence or non-existence of predisposing and exciting causes.[2] Gall met with four examples of women who when pregnant stole, or were impelled to steal, and who were perfectly honest at other times. The

[1] Marc, vol. ii., p. 355, mentions the case of a medical man whose kleptomania was manifested in stealing table-cloths and nothing else.

[2] Evidence as to the hereditary character of the disease which is in question, so long as the evidence refers to those lineally connected with the supposed lunatic, is admissible in England. Frere *v.* Peacocke, 3 Curt. 670; Reg. *v.* Ross Tuckett, 4 Law, 750. See, however, Doe de Mather *v.* Whitefoot, 8 Car. & P. 270; McAdam *v.* Walker, 1 Dow. 179. But such evidence is inadmissible in Scotland. Gibson, 2 Broun, 332. See also chapter on Proof of Insanity.

precautions taken to avoid suspicion are, however, often indicative of the presence rather of moral turpitude than of moral insanity.

§ 200. **Confession of the Crime.**—Very frequently, the kleptomaniac is not unwilling to avow the act. Many confess that they know that what they are doing is wrong, but say that they have a mad longing to possess themselves of everything they see.[1] Some plead inability to resist the temptation to steal when they see certain articles, and make no attempt at denial. And in connection with such confessions, we may often find the individual restoring the stolen goods to the real owner. When such restitution takes place without the presence of motives which would influence an ordinary man, such as probability of detection or the like, it is very strong corroborative evidence of the hypothesis that the [136] original taking was due to disease. The number of thefts, the conduct, and the circumstances of the individual upon each occasion, ought not to be disregarded in the consideration of any case.

§ 201. **Conduct Subsequent to Crime.**—With regard to the conduct of the individual subsequent to the acquisition of the stolen article, the assertion that in many cases they make no manner of use of the property acquired may be taken as a rule. Kleptomaniacs very frequently seem to find the satisfaction of their morbid desires in the simple act of taking, and often throw away or disregard the article when actually possessed of it. In this they resemble children. The love of acquiring in the young outruns the knowledge of how to utilise an article when acquired. And so it is with many lunatics. When the article is not cast away or disregarded by the kleptomaniac, it will almost invariably be hoarded. And when neither of these courses of action are taken, but the individual proceeds to use it as it ought to be used, proceeds to derive the pleasure from it, it was meant to minister, there is some cause to be careful in believing in the existence of kleptomania. Another circumstance which will

[1] Marc, vol. i., pp. 275–303.

assist the medical jurist in deciding whether the act belongs to the category of crime or disease is the existence or the non-existence of conspiracy, or a plan between the kleptomaniac and another person to steal together. Such a conspiracy to steal is common among sane persons, but does not exist amongst insane persons as a symptom of their insanity. There was once an idea that the insane could not combine to do any act, that they could not conspire together for good or evil. We believe, however, that such an idea is not borne out by the facts, and that insane persons do conspire to do certain acts, but *quoad* those acts they are sane, and for those acts they ought to be held responsible.

§ 202. **Theft in relation to Bright Objects.**—A curious fact has been observed in connection with the diseased propensity to acquire, viz., that in many instances it is felt only in relation to bright or glittering objects. People steal things that glitter. This rule is, however, by no means invariable. The analogue of such a propensity is to be found in certain birds. Every one knows the old story of the maid and the magpie—how the bird took the spoon, and the maid was suspected of theft. And few persons have not laughed over Ingoldsby's "Little Jackdaw of Rheims." We suspect that the individual who took and retained common pins must have had the diseased desire for the brightness. And in a very instructive case mentioned by Casper, to which we [137] shall again have occasion to refer, the lady during her pregnancy had an irresistible desire to possess shining objects, especially those of new silver. Other cases of the same kind might be mentioned. We need not again call attention to the fact that the history of the case must be carefully considered. Cases are on record where moral insanity has been ascribed to the injury of the head by the instruments which were used in the accouchement. And in the Journal de Paris, March 29th, 1816, (it is a case often quoted,) the following paragraph appeared: "An ex-commissioner of police at Toulouse Beau-Consiel has been condemned to eight years' confinement and hard labour and to the pillory, for having while in office stolen some pieces of plate from an inn. The accused persisted to the last in an odd kind of defence: he did not deny

the crime, but attributed it to mental derangement produced by wounds he had received at Marseilles in 1815."

§ 203. **As to the Frequency of Kleptomania.**—We will only in this place add a very few words. Kleptomania is by no means common. The "Times" upon one occasion said: "Every one who is acquainted with London society could at once furnish a dozen names of ladies who have been notorious for abstracting articles of trifling value from the shops where they habitually dealt." This, it appears to us, is an exaggeration. However, that there are true cases of theft-madness, in which neither delusion nor imbecility is connected with the desire to acquire, we are bound to admit.

§ 204. **How are Kleptomaniacs to be Dealt with by Law.**—And the question for us here is, how are such persons to be dealt with when they come before our criminal courts? And we have only again to repeat the recommendation that, if the individual is charged with any other crime than theft, the insane propensity to steal should not be regarded as a bar to punishment. It may be said that incarceration in a prison may aggravate the disease under which they labor, and it may be so, but that ought to make such individuals more careful not to commit such acts as may bring them into circumstances not compatible with health. If the individual is charged with theft, and it can be shown that he was in a condition to be deterred by the fear of punishment; if, for instance, it is shown that it was the advantageous circumstances which tempted him to commit the crime; if he can be shown to be, even with regard to his diseased propensity, under the influence of ordinary motives, he ought to be held responsible for his acts. If, on the other hand, he is not in a position to weigh motives, and if his [138]incapacity is due to disease, if no ordinary circumstances induced to the theft, as no ordinary circumstances could have restrained him from its commission, he ought to be regarded as irresponsible, and ought to be exempted from any punishment.

§ 205. **Case of Kleptomania of Bright Objects.**—The case above alluded to as reported by Casper will be of some

importance in this connection. Madame de X—— had committed thefts in three goldsmiths' shops during her pregnancy. She had after her accouchement confessed to her husband that she had during her pregnancy had an irresistible desire to possess herself of shining objects. She confessed to having taken objects from shops, and declared that on one occasion when she went to return the goods she had been restrained from so doing by the belief that the articles were her own. Much evidence was given which went to prove the existence of mental aberration. Casper was referred to, and he concluded that the diseased propensity of Madame de X—— was not irresistible, that she had not been compelled to commit the three thefts in spite of herself, and they were criminal actions for which she was responsible, and he gave as reasons: 1. That although the accused had besought her husband not to take her to those places where shining objects were to be seen, she went to goldsmiths' shops of her own accord, and without any necessity for so doing. 2. That she paid away silver. 3. That she broke up the objects she stole in order that they might not be recognized and in that way lead to her detection. 4. She had not gone to the same goldsmith's shop twice. 5. She had concealed her conduct from her husband. 6. And when she was interrogated, had made many false and contradictory statements. Looking at all the circumstances of the case, we cannot but think that the medical jurist's decision was in accordance with sound principles of law and medicine.

Part II.—Erotomania.

§ 206. **Sexual Instincts.**—The passion which unites the sexes is not a simple feeling, but "compounded of many simples," like Jacques' melancholy. The purely physical elements of love are, as it were, its raw material, or rather the foundation-stone of the lofty house love builds and man dwells in. The admiration of personal charms, beauty the more imaginative, and handsomeness the more animal, excellence of human form, grows about the physical feelings as lichens do about rocks. Then comes the higher friendship—the sentiments of respect, affection, reverence—the grateful

flutter of [139]feeling when one is an object of paramount interest to another—the idea of ownership, and such ownership! How proud men are of a pretty wife! Then comes the mortar of mutual confidences, of shared knowledge, of common secrets. Custom binds men and women together even when other things fail. The feelings of power, of protecting and being protected, of legal rights, all cluster round this shrine of physical love. The more the stem is hidden beneath its leaves the purer is the love. The man who gratifies his passion for actual physical enjoyment, who has no care for the welfare of the woman who is instrumental to his pleasure, who feels no friendship for her, who experiences none of the better and purer feelings which ought to be associated with love, who has no care for the thoughts or sentiments which may be part of her life, is less of a man and more of an animal than most of his fellows. He indulges in a vice which morality has set its canon against, although it has not seemed expedient to the legislature to regard it as a crime.

§ 207. **Disease in connection with Sexual Instincts.**—There may be such an exaltation of the sexual passion as to amount to disease. We have seen that disease may manifest itself through any of the many series of relations that a man bears to his external environment. And it is important for the medical jurist to recognize this specific form of disease with reference to the deprivation of liberty which must in so many cases take place. Erotomania proper is to be distinguished from nymphomania and satyriasis, and may be defined as an excessive love for a real or imaginary individual of the other sex. It may and often does occur in connection with mental disease which is manifested by many other prominent symptoms, but occasionally the love-symptoms are the only indications of insanity. The insanity in such a case is not to be traced to any physical disorder, but to serious and indulged-in misapprehensions as to the feelings and sentiments of others. "The subjects of erotomania," remarks Esquirol, "never pass the limits of propriety: they remain chaste." On the other hand, nymphomania and satyriasis are characterized by an entire absence of any of the higher or purer feelings of healthy love, and give rise to the most

obscene proposals, and to acts of the most disgusting and shameful description. Yet it is to be remembered that, although we thus distinguish erotomania from nymphomania and satyriasis, we must not always expect to find them thus clearly marked out from one another in nature; indeed, they are most frequently found to coëxist.

§ 208. **Classification of Diseases manifested in relation to Sexual Instincts.**—[140]Although nymphomania and satyriasis originate in the organs of reproduction, we very often find such departures from all the rules of propriety as would, according to the description of Esquirol, lead us to believe that the individual's conduct was not due to the less virulent erotomania, and yet we are unable to trace it in its origin to any disease of the reproductive organs. We have, therefore, used erotomania as the general term, and would distinguish erotomania as described by Esquirol, and nymphomania (or uteromania,) and satyriasis, as the three forms, or (looking upon the last two as one) as the two forms of this disease.

§ 209. **Erotomania.**—In erotomania there is almost invariably great depression of vital energy: it is one of the most direct roads to dementia. Disease of the cerebellum has been suggested as the chief cause of this disease. In most cases, there is evident deterioration of the intellectual faculties, although in others there is little or no connection traceable between the insanity and the ordinary reasoning faculties. As illustrating this statement, we may quote the following case: "A young man, previously of most respectable character, became subject to severe epileptic fits, which were the prelude to attacks of violent mania, lasting, as it generally happens in this form of disease, but a few days, and recurring at uncertain intervals. These complaints after a time disappeared in a great measure, but they left the individual excessively irritable in temper, irascible and impetuous, liable to sudden bursts of anger and rage, during which he became dangerous to persons who were near him. Of symptoms of this description, a state approximating to the satyriasis of medical writers is no unusual accompaniment, but in the present instance the diseased propensities of the

individual were displayed in such a manner as to render confinement in a lunatic asylum the only preservative against criminal accusations."[1]

§ 210. **Of Simple Erotomania.**—As illustrating the form of erotomania which is characterized simply by excessive love to a real or imaginary individual, and as showing how any of the associated sentiments may manifest themselves in connection with this morbid emotional affection, we may quote from a paper in the Journal of Mental Science. The writer says it is "generally displayed (in asylums) by careful and studied toilets and bedeckings with supposed fineries, and, as usual, is best marked amongst the females. It is often manifested at the sight of [141]any one of the opposite sex indiscriminately, when languishing glances, smiles, and unmistakeable fondness are displayed. Or, again, they are more capricious, praising in exaggerated strains the goodness of, and their devotion to, the object of their affection; and they are versatile and flighty withal. So intense and engrossing does the ailment become in some instances that the patient lapses into dementia from excessive nervous exhaustion. One lady is never done talking of honorable marriage, and the husband she ought to have had if she had been permitted to remain outside, away from the parties that administer chloroform and ether to her. In her case, there is hyperæsthesia of the emotions, and her impassioned entreaties, tears, and seizing of the hand, betray the ardour of her attachment. Another openly beseeches the object of her attraction to marry her, and is never tired of conversing with her companions about him, planning the most extraordinary means to assist her in accomplishing her end, and jealous of every slight attention paid to other than herself. She openly watches him on every available opportunity, and the same anxious form is seen peering from a window over the exercise ground where her fancied lover is. Her whole soul is wrapt in the one all-powerful passion. Yet she is for the most part candid, and not given to any secret abuse."[2]

[1] Prichard, Treatise on Insanity, p. 25.

[2] On some Varieties of Morbid Impulse and Perverted Impulse, by W. C. McIntosh, Jour. of Mental Science, Jan. 1866.

§ 211. **Case of Simple Erotomania.**—A tendency similar to that described in the above quotation has been observed by ourselves in old people whose health was not impaired. And we remember one old lady who changed her lodgings repeatedly because she thought that she was followed by an amorous youth, and strict virtue even at the age of eighty advised her to fly from temptation. She was under the impression that cabmen pinched her hands—as only a woman's hand can be pinched by a man—when she gave them their fare, and believed that her ankles were universally admired by males who did not hesitate to express their opinions as to their excellence. Although over eighty years of age, she never would walk out alone. And yet this individual was to all intents and purposes sane. She had never been married.

§ 212. **More Depraved Forms of Erotomaniacal Impulse.**—But we turn to the more serious form of this disease—the lewdness which fills man

> "With reproachfull pain
> Of that foule evil which all men reprove,
> That rotts the marrow and consumes the brain;"

[142] which manifests all the most degraded propensities. Cases often occur in which an intense desire for sexual congress is openly expressed, or in which the patient, being a woman, frequently exposes herself in the presence of males. Cases of self-abuse are by no means uncommon, and the general debility which masturbation directly produces operates most injuriously on the nervous system and the brain. Patients laboring under dementia are constant in the practice of masturbation, and seem to have no shame connected with the discovery of the habit.

§ 213. **Case of Erotomania.**—Many cases of erotomania are on record.[1] We will only quote one. "A very intelligent lady was tormented from infancy with the most inordinate desires. Her excellent education alone saved her from the

[1] See Esquirol Malad. Ment., vol. ii., pp. 32, 49; Annales Hygiène Publique et de Méd. Leg., tom. iii., p. 198. See also Marc, vol. i., p. 209; Bayard on Uteromania; and Tuke and Bucknill, Psy. Med.

rash indulgences to which her temperament so violently urged her. Arrived at maturity, she abandoned herself to the gratification of her desires, but this only increased their intensity. Frequently she saw herself on the verge of madness, and, in despair, she left her house and the city, and took refuge with her mother, who resided in the country, where the absence of objects to excite desire, the greater severity of manners, and the culture of a garden, prevented the explosion of the disease. After having changed her residence for that of a large city, she was after a while threatened with a relapse, and again she took refuge with her mother. On her return to Paris she came to me (it is Gall who speaks) and complained like a woman in perfect despair. 'Everywhere,' she exclaimed, 'I see nothing but the most lascivious images: the demon of lust unremittedly pursues me at the table and even in my sleep. I am an object of disgust to myself, and feel that I can no longer escape either madness or death.'"[1]

§ 214. **General Remarks as to Erotomania.**—This disease is more frequent amongst women than men, and amongst the unmarried than the married. In many cases it can be traced to disordered menstruation. With regard to the season at which those diseases are most prevalent, nothing is definitely known, although from analogy we should expect that it will probably be discovered that the warming spring time is the most unfavorable, in [143]so far as season and climate predispose to this disease. Erotomania is very frequently combined with hysteria. One case in which an insatiable sexual appetite was present came under the notice of a medical man, in which it had in its earlier stages been complicated with hysteria, and had passed into inveterate self-abuse. So far as he could discover, no intellectual symptoms manifested themselves in this case.

Part III.—Dipsomania.

§ 215. **Dipsomaniacs and Habitual Drunkards.**—The question as to the existence of a diseased condition which

[1] See, for this and other cases, Gall, Sur les Functions du Cerveau, t. iii., p. 318.

indicates its presence by intemperance and inebriety has become all the easier of solution since we have become cognizant of some of the facts which go to establish the belief in the existence of the kindred diseases just considered. Indeed it would be illogical to admit that, although a certain class of acts might be a symptom of insanity, (for example, that pilfering might be regarded in that light,) another class of acts could not, under any circumstances, be the equivalent indication of morbid mental conditions. We know how constantly intemperance is the only cause of insanity, and we have here to consider whether it may not under certain circumstances be looked upon as the only symptom of insanity. We have already seen how men may by habit incapacitate themselves from exercising the ordinary human freedom of choice. Such individuals are, when they have lost the power of choice in relation to the pleasures derived from excessive use of spirituous liquors, properly called habitual drunkards. But it would, it appears to us, be utterly absurd to regard such persons as, in consequence of their habit, insane. They may, and often do, become insane in consequence of a constantly-indulged craving for stimulants, but that the fact of the existence of such a craving should be looked upon as a conclusive proof of the existence of insanity is an unwarranted assumption. Who that has "made a night of it" has not felt the craving for stimulants upon the morning following? and is the dry mouth, the hot thirst, the headachy giddiness, and the wish for brandy and soda to be looked upon as satisfactory evidence of a diseased impulse? You say, "No, it is not a habit; but when it is a habit a man is a child in its hand, and therefore irresponsible and mad." And when does this habit become so strong, and who shall decide that for us? Is it after ten or fifty debauches? And are we to allow habit to be pleaded in proof of insanity? If so, a man whose virtue has grown easy with wear—a man who has a habit of saying his prayers night [144]and morning, and does not like to go without these religious gymnastics with dumb-bell sins—the man who has an irresistible desire for a cup of coffee after his dinner—these men are not sane! But our true guide must not be the simple existence of a habit which has been made by indulgence:

such a habit can be unmade by a reverse process. If a man willingly and knowingly forms a habit, he is liable to the consequences of having done so, just as the man who opened the door of the cage of the lion that killed the man is guilty of murder. Simple habit must not of itself protect. But if the man did not start fair, if we may so say—if mental delusion, weakness, or disease deprived him of his power of choice, and if we can say that, but for the presence of those morbid conditions, the habit never would have been formed, there would then be some reason for looking upon excessive intemperance as due to mental disease. The psychological history of the case will always enable us to come to some conclusion as to this important question. There is some reason for pausing before we pronounce upon the viciousness of the indulgence of a man's propensity if we discover that his father died in a lunatic asylum. Where the history of the genesis of the symptom is not that which it would be in the case of a mere habit, there is another reason for care in our examination. Oinomania not unfrequently appears under circumstances which negative the hypothesis of habitual drunkenness; as, for example, in early youth or in old age, after a life of trials withstood, after a life of temperance and sobriety.

§ 216. **Practical Rule as to Diseased Propensity and Habit.**—Sir Robert Christison lays it down "as a practical rule for both lawyer and physician that when in a particular case the avidity for strong liquors has reached such a height as (1) to cease to be controllable by every plain and powerful moral and religious consideration, (2) to overwhelm the mind in frequent or continued intoxication, and (3) to occasion danger or actual damage to one's affairs or family, or both, it ought to be regarded as a disease, and treated as an insanity." This is, on the whole, a good practical rule. We know that no physician who has had any experience would now deny that there is a morbid impulse to drink, just as there is, as we shall hereafter see, a morbid tendency to self-destruction; and it is our duty to consider the various forms that it may assume, and the various circumstances under which it is most likely to arise. It may be (1) acute, (2) periodic or recurrent, (3) chronic.

§ 217. [145]**Acute dipsomania** ought scarcely to be regarded as a kind of dipsomania at all. It arises where it is only the most ready excess that the individual has an opportunity to indulge. Men who have found out the "world's villainy"—men who have learned that "moth and rust do corrupt" the treasures we have stored in our homes and our hearts—men for whom of a sudden the world, and flesh, and devil, which the lawyers, doctors, and clergy try to protect us from, have proved too strong—drink, glad to lose the dire reality of to-day in the reeling dreams of drunken sleep. Such men would, ostrich-like, plunge their head into any ambush vice, and hide the world and forget the pursuit. But such excuses ought not, it appears to us, to be regarded as due to the influence of disease. And it is only out of respect to the authorities which have mentioned it as one form of dipsomania that we have alluded to it in this place.

§ 218. **Periodic or Recurrent Oinomania** is not unfrequently found in individuals who have suffered from injuries to the head, and sometimes in women during pregnancy. It is to be observed that in many cases the relation of the individual to the stimulants is peculiar, in so far as the quantity of the stimulant is related to the extent of the result. In some cases, owing to constitutional idiosyncrasies of the individual, a very small quantity of alcohol has an effect utterly disproportioned to the cause, if we judge of the proportionate relation from an ordinary experience of mankind. In such cases, although a strict moral code would enforce entire abstinence, a somewhat lenient mercy might find an excuse for some occasional excesses. It is sometimes found that this sensitive liability to be affected by stimulants is associated with the form of dipsomania at present under consideration. The recurrent or periodic form has very often a family tree of disease. We are all proud if we can trace our name back for a century or two. Old blood is thought a grand thing, but what can trace back its family like disease? When William came over, it was with him, but it was here too. It fought on both sides. Where Adam was, it was. This form of

Whether there is such mental disease and whether defendant had that disease were said to be facts for the jury in State *v.* Pike, 49 N. H. 429. Contra as to *oinomania*, Choice *v.* State, 31 Ga. 471.

oinomania comes, as its name indicates, in paroxysms. For weeks or months the individual may be entirely free from any tendency to exceed, or may even abstain with loathing from all forms of stimulants. Yet, upon that [146] account it is not to be confounded with the occasional fall of a quasi-virtuous man, whose citadel-will holds out long, but gives in to great temptation. It is more analogous to that form of disease which is characterized by lucid intervals. Those impulses which are only felt at certain times, like the east wind of this country, and are not like the chronic trade-winds of the south, to a great extent resemble those intermittent attacks of disease which give place to tracks of time characterized by calm and perfect health. "It is related," says the writer of a paper already quoted, "that a merchant of capital always got into a state of delirious intoxication from autumn to spring, but was most exemplary during the rest of the year: he was cured by being sent to the warmer climate of Italy during the winter."[1] A somewhat curious mode of treatment, and one which seemed to look upon the disease as due to the effects of cold! To whatever cause such periodical recurrences of the disease can be ascribed—and we fear that it does not, like green peas or oysters, come round with the seasons—it is certain that, if the tendency is unchecked, it will in time either become chronic or will lead to imbecility or mania. The chances of recovery are not by any means great. It is a difficult thing to break the back of a habit, even when in a healthy man, where its power is at its minimum, but to break the back of such a habit in a man diseased, where it has been formed because there was no human strength of good purpose to resist, is much more difficult. Resolutions during the lucid intervals which occur between the attacks are as numerous in the air as swallows in summer, but they disappear as fast, and are forgotten until the calm comes again. Promises thought to be binding are proved to have no force. The man is as pithless to resist as a straw in a river.

§ 219. **Chronic Dipsomania.**—The healthy condition of the eye is to have the sensation we call light in relation with

[1] On some Varieties of Morbid Impulse, Journal of Mental Science, Jan. 1866

certain motions of an imponderable ether, but a blow in the eye will make it "flash fire," and give a similar sensation to that we experience when the eye is in light, although the blow may have been inflicted in the dark. The healthy choice, the exercise of will, seems to us to bear a relation to the impulsive choice, or exercise of will under the influence of disease, which we have already described, very similar to that which is borne by ordinary consciousness of actually stimulating light and [147]the extraordinary consciousness of light in consequence of the immediate effects of violent mechanical force. We are, in our present circumstances of health, which "holds the balance true," scarcely in a position to judge of the temptations of those whose scales are all awry, or of those who have no scales at all. Did you ever try to weigh two articles whose size, material, etc., gave no indications of their weight, with your two prejudiced hands? If you have, you will know what a liar the flesh is, with its muscular sense of touch notwithstanding. But the illustration between the flash of light as produced by a blow and the light as produced by undulations of an imponderable ether seems to us to be calculated to impress the distinction between material impulse and mental or motive weighing choice more clearly upon the mind of the reader. In the case, then, of chronic oinomania, the winds of capricious impulse, which generally blow where they list, have got a charter, and can't tack about as they like. Hereditary taint, injuries to the head, disease of the heart, and habitual intemperance, all, at various times and in various degrees, influence the formation of this persistent habit. In this form of the disease, the sufferer is always gnawed by a craving for stimulants. And we may here mention that this disease may manifest itself in relation to any of those substances which induce a present pleasure, to be followed by a future pain, which can be relieved by recourse to the original bane. On this form of dipsomania serious brain disease is almost certain to supervene, and during its continuance a gradual deterioration of all moral tone is observable. Reverence for truth is very quickly parted with, and the respect which is due to the property of a neighbor and strongest religious dictates do not keep the hands of the oinomaniac from pick-

ing and stealing. We know of one lady who stole her children's pocket-money to satisfy her insane craving.

Much interest is connected with the question as to whether the dipsomaniac ought to be confined in a lunatic asylum; whether the law has any right to interfere with the liberty of a man to make himself drunk when he pleases; whether it be like the lord mentioned by De Quincey, who used to say, "Please God, I shall be drunk upon Saturday next," or be like him who was always what the Scotch call "boozy," so much so that some country folk surmised that it would be some time before he came to his senses either in heaven or hell, and that then he would wake to the sound of the last trump with a headache. But looking at the subject from an [148] ordinary common-sense view, we believe that, as in many cases it can be proved that an individual has lost entire control over his actions, in certain relations of which incessant drunkenness is the significant fact, and as to deprive such a person of liberty for a season is to do him no wrong, but rather the compulsory right of making him abstain from what day by day gains an ascendancy over him, and day by day renders ultimate recovery and useful citizenship less and less possible, it is well to resort to restraint in cases in which these facts are capable of being proved. That habits can be formed under an absolutely necessary abstinence we do not doubt, and we believe that the careful diminution of the excitant as the ordinary human sentiments begin to operate beneficially, can only be properly trusted to a medical man. In the northern half of this kingdom many persons laboring under dipsomania are confined in houses set apart for their detention, and we are informed that there is at least one similar institution in the United States. There are doubtless many persons confined in those institutions that cannot with any propriety be called insane, but we would ascribe this circumstance to the irregular method of confinement of patients in these establishments, which are not under the ordinary control and supervision of the Commissioners in Lunacy, and to the ignorance which exists with regard to this disease in the profession generally. But when we come to examine the legal relations of intemperance, we shall have another

and better opportunity of considering this and some cognate questions.

Part IV.—Pyromania.

§ 220. **Arson.**—The malicious and wilful burning of the house or the outhouse of another man[1] is looked upon by the law as a felony. Until recent times, the setting fire to such a building, *any person being therein*, was punishable by death, and even at the present time it is, if need be, punishable by penal servitude for life. It is not merely the setting fire to a dwelling-house that constitutes the crime of arson, but he who burns a church or chapel, office, mill, malthouse or granary, or any building used in trade or manufacture, or farm-building, etc., is guilty of felony. Under the old law, the mere setting fire to a building did not fall within the description *incendet et combussit*, and did not, therefore, amount to the crime of arson. Under the statute now in force, however, the offence consists in setting fire to a building, and therefore it is not necessary [149] that it should be burned or actually consumed. There is one word of some importance in the definition of this crime, and that is the word *malicious*. Malice—as we use the word in the world—means ill-will, hatred, accompanied with a desire to injure the object of the sentiment; but malice in law consists in "the wilful doing of a prohibited or injurious act without lawful excuse;"[2] or in law it is understood to mean any wicked or mischievous intention.[3] In a prosecution for murder, which in the indictment is alleged to have been committed "of malice aforethought," it is not essential to show that the prisoner bore any ill-will to his victim, nor would any proof of the absence of enmity be a good defensive excuse if the charge was made out in every other respect; and the word malice, as used in the definition of arson, has this meaning. If the burning is

[1] See 24 and 25 Vic. c. 100.

[2] Cr. L. Com. 6th Rep. p. 52, per Littledale, J.; McPherson v. Daniels, 10 Barn. & C. 272.

[3] See per Best, J., Rex v. Harvey, 2 Barn. & C. 268; Reg. v. Cooke, 8 Car. & P. 582; Rex v. Farrington, Russ & Ry. 207.

not malicious, it only amounts to a trespass, for no amount of carelessness or negligence can fill out the meaning of the word malice.[1] A servant, however, whose duty it is to be careful, who through negligence sets fire to a house or out-houses, may be sent to the house of correction for eighteen months.

§ 221. **Pyromania.**—Notwithstanding the severity of the punishment which the law has prudently associated with a proved commission of the crime of arson, the offence is not unfrequently committed, and upon very many of the occasions where houses, farm-buildings, and the like, are set fire to, it is by those who are under the influence of the temporary excitement to which psychologists have given the name of pyromania. Many insane persons, from the simple desire to destroy; from the wish to burn the house down, that they may perish by a sort of quasi-suicide; from the mere wish to give annoyance, will, upon occasion, set fire to anything within their reach; but such cases do not fall within the meaning of the word pyromania. That a propensity to set fire to, and to look at the burning of, anything that will burn, does in some morbid conditions find its way to prominence in the democracy of mind, and makes a despotism of that republic, seems certain. It is certainly curious that what seems to ordinary men the means of a very limited gratification should in the mind diseased be the cause of a perfect ecstacy of excitement.

§ 222. **As to Motives.**—[150] What a grand history might be written of the lives of motives. Every age has its own loadstar motive. Every country has some motive which to it is more valuable than life, for which it will make war, for which it will starve and perish. And individual minds have god-motives, which rule them, some right, some wrong. But the power of motives varies in every individual mind, and in the same individual at different times and seasons. Who can look back and say, as he remembers the self of a year ago, I am the same man now that I was then? I am influenced by

[1] But see Reg. *v.* Davies, 1 Foster & F. 69.

the same desires, and to the same extent? No one can say so, and speak truth. Men's minds are as unstable as the sea, which has shifting tides on shifting sands. But some laws can be deduced even from those changes. The same objects are not sought after by boys and men: the same motives are powerful or powerless as the mind is weak or strong—as the life has many objects which minister to it, or few.

§ 223. **The Love of Bright Objects.**—There is one liking of children which men put away to a great extent with other childish things, and that is the love of the gaudy. The higher a man is in the intellectual scale the less he cares for mere brightness: the weaker the mind is the more will be its enjoyment in a blaze. Fireworks are for children or imbeciles: the little peepy stars which nobody looks at strike a man like Kant dumb. We believe that a close connection exists between this love of the bright and glaring and the propensity which we have already considered of theft in connection with glittering objects. Any brightness has an extraordinary influence over rudimentary minds. It is to be noted that the dress of men as they become more civilized becomes less gaudy. The moth dies with a "puff" in the candle. Pigeons will forsake home for the sake of a mirror. And one of the most deadly baits used in fishing is the "spoon bait," which is bright and glittering. We believe, then, that the propensity to incendiary acts is connected with this inherent principle of weak minds, and as a proof, or sort of proof, of the assertion, we may state that this disorder is more frequently found in girls than in boys, and that in almost every case it occurs in early life, either about or under the period of puberty. We conclude that this motive has more force at such a time, owing to the development of the sexual functions, which invariably withdraws energy from the mental state. Marc is of opinion that it is manifested at this period in consequence of an abnormal or irregular development of those functions, which would bear out our theory if it could be proved to be true.

§ 224. **Where Act is dictated by Revenge.**—[151]Many cases, however, occur in which the act seems to have been

dictated by feelings of revenge. And in such cases, even although there may be mental weakness, there does not appear to be sufficient ground either to regard it as pyromania or to hold the individual irresponsible for the act. In the other class of cases, where the impulse is so strong as to be in fact irresistible, where the motives for not committing the crime, as looked at from the point of view of the accused, were as strong as they could be for doing it—as where the property was a man's own and uninsured—and still the act was done, there is good ground for regarding the individual as insane, although no very prominent intellectual features of disease may be discoverable.

§ 225. **In connection with Delusions.**—When it is associated with delusions the conclusion of the insane origin of the act can generally be traced, as in a case where a girl believes that God has told her to burn down a certain church, or that her mission is to give light to the world by setting fire to haystacks. But there are many instances in which no delusion could be discovered, in which the act was in precisely the same relation to the individual that we have found the appropriation of property to be in some cases, and where the only reason that can be given by the individual is that "She couldn't help it."[1] Jonathan Martin set fire to York Minster. There could be no doubt as to his insanity, even apart from this act. It is interesting to observe in his mind, as manifested in all his pictures, that love of the gaudy which we have been considering. He paints in colors which almost wound the eye.

§ 226. **Cases of Pyromania.**—Thus, Marc mentions the case of a boy of sixteen, who, after struggling with an impulse to set a friend's father's house on fire, at last yielded, or after a year could not restrain the impulse.[2] Ray mentions the case of "a girl of quiet, inoffensive disposition, and whose character had hitherto been exemplary, who made seven different attempts at incendiarism, in a village near Cologne.

[1] Cases of pyromania, as an incident of insanity, are given in Friedrich's Blatter for 1870, p. 33, and for 1871, p. 262.

[2] Marc. vol. ii., p. 291.

When interrogated as to the motives which had prompted her to act so wickedly, she burst into tears, confessing that, at certain periods, she felt her reason forsake her, and that then she was irresistibly compelled to the commission of a deed of which, when done, she bitterly repented. She was acquitted by a jury of all criminal [152] intentions."[1] He also quotes a case from Gall,[2] which Gall quoted from a German journal, of a certain Maria Franck, who was executed for "fire-raising." Within five years she set fire to twelve houses. She was of peasant origin, and an unhappy marriage induced her to try and drown memory in the oblivion to be got by intemperance. She once saw a fire, and "from the moment she witnessed this fearful sight she felt a desire to fire houses, which, whenever she had drunk a few coppers' worth of spirits, was converted into an irresistible impulse. She could give no other reason, nor show any other motive, for firing so many houses, than this impulse, which drove her to it. Notwithstanding the fear, the terror, and the repentance she felt in every instance, she went and did it afresh."[3]

§ 227. **Comment on last quoted Case.**—In this case it seems far from certain whether the accused should have

[1] Medico-Chirurgical Review, July, 1836, p. 216; Ray, Med. Jurisprudence of Insanity, p. 133.

[2] On the Functions of the Brain, vol. iv., p. 104.

[3] See The Lord Advocate *v.* Gibson, 2 Broun, 332. An interesting case was tried at the High Court of Justiciary, Edinburgh, in the year 1855. A medical man, Dr. Smith, was charged with wilful fire-raising at the Haughs of Kinnaird, near Brechin. The defence in this case was that Dr. Smith was insane. There was no doubt as to the facts alleged in the indictment. Dr. Christison, in his evidence, said: "I have not seen him at any time in a state of insanity. I would think it very probable he may occasionally be in a state of insanity, notwithstanding the calm and quiet state in which I found him in prison. A medical gentleman sent to see him, and merely sitting and talking with him, would not, except by accident, discover any trace of insanity. The form of insanity I would expect in this case is unreasonable suspicion and strong feeling of resentment on account of imaginary injuries; but, of course, any form of insanity might arise, though the one I have mentioned is the usual form. A man under the influence of such delusions I would pronounce insane for the time." The jury found that Dr. Smith "committed the act of fire-raising mentioned in the libel, but that he was insane at the time of doing so." Cases of this kind are to be distinguished from pyromania properly so called. A man with a delusion resorts to many of the same acts that a sane man will, and when the fire is raised with the intention of revenging a supposed injury, the act, although an insane act, is not that of a pyromaniac. The whole of the evidence in this case will be found in the Journal of Psychological Medicine, April, 1855. High Court, 15, 16, and 17 Jan. 1855, 2 Irvine, 1.

been held irresponsible. It seems to have been in her power directly to avoid the recurrence of the impulse by entire abstinence from alcohol. And if a man voluntarily and knowingly place himself in a position where he has no choice, but must commit a crime, he is properly regarded as voluntarily committing the act in question. To relieve Maria Franck of all responsibility, the defence would have [153]required to prove that she was not a voluntary agent at the time she took the stimulants.

§ 228. **General Remarks as to Pyromania.**—Without dwelling longer upon this form of insanity, which is not by any means common—although a large number of cases occurred in Normandy in 1830—we may remark that in all cases it is important to ascertain whether the incendiary act has been committed upon the approach of menstruation, or in connection with its disorder or suppression. Inquiry should always be made as to the condition of the patient's nervous system, as to whether he is liable to involuntary muscular movements, tremblings, spasms, convulsions, or catalepsy. Together with those symptoms we may generally expect to find weakening or weakness of mind approaching to imbecility.[1] At the winter assize at Leeds, (4th December, 1871,) James Wrighton was indicted for arson. It appeared from the evidence of a gentleman who had known the prisoner all his life that he had on one occasion attempted to set the workhouse in which he resided on fire; that he was of weak mind, but knew the difference between right and wrong. Pigott, B., left it to the jury to say whether the prisoner knew the difference between right and wrong, but laid some stress on the evidence of his being weak-minded. The jury returned a verdict of not guilty, on the ground of insanity, and the prisoner was ordered to be kept in prison until her Majesty's pleasure was known concerning him.

Part V.—Suicidal Mania.

§ 229. **Suicide and Insanity.**—Many wise men have argued that under certain circumstances a man is entitled in

[1] Other cases will be found in Dr. D. H. Tuke's work on Psychological Medicine, and in Marc. See Griesinger, Syd. Soc. ed., § 129.

mere self-defence to kill himself. Hume, Rousseau, Madame de Staël, Montesque, Montaigne, Gibbon, and Voltaire, have all endeavored to show that circumstances might justify suicide; and one writer, Robert of Normandy, surnamed the Devil, not only wrote in praise of it, but, knowing how much more powerful example was than precept, actually killed himself! Many men of much nobility have committed suicide; and Isocrates, Demosthenes, Cato, Lycurgus, Codrus, and a great many more, have tried to get into the next world by a sort of private entrance. But although philosophers and lawgivers once thought that suicide was not to be condemned, and imagined that circumstances might arise under which it would be the most rational course to pursue, in the present day we are informed emphatically that "suicide is not the act of a healthy mind," and are assured that in all cases suicide is a proof of the existence of insanity. So Sir S. Romilly, Lord Castlereagh, Cotton, and Chatterton, were all mad according to recent medico-psychologists. Now, although the actual pleasure of living is, even in the midst of sorrow, very great—

> "This world is very beautiful, O God!
> I thank thee that I live"—

times do come when that thread of hopes and fears, sensations and sentiments, thoughts and deeds, which we call life, yields so little joy][154]in the meantime, and so little hope of "better to be had," that a very wise man might see reason to be hurled

> "Anywhere, anywhere,
> Out of the world."

It may be better and braver to stay and bear the evils. It is nobler and grander to stay for the sake of others, that by your patience under suffering they may learn the great lesson of life to suffer and be strong. But the man who does not do the bravest thing he might do—the man who is not guided by the best and highest moral rules—is surely not mad.[1]

[1] Suicide is not sufficient of itself to prove that the person committing it was of unsound mind. Burrows *v.* Burrows, 1 Hagg. Ec. 109; McAdam *v.* Walker, 1 Dow., 179; Chambers *v.* 9 Proctor, Curt. 415; Brooks *v.* Barrett, 7 Pick. 94.

And we are warranted in believing that, although in many cases self-destruction is a symptom of diseased organism, yet in other cases it is a matter of healthy choice of possible good rather than positive evil. It is a choice which men make each day of their lives. Speculation is a choice of a possibility as against a certainty. Gambling is for the pleasure of playing with possibilities. Many motives are only "orders," and some of them are dishonored in time. Well, suicide may be the act of a healthy mind.[1] It may in all cases be a mistaken choice: it may always be wiser

> "To bear those ills we have
> Than fly to others that we know not of."[2]

But a mistake is not a proof of mental unsoundness, nor is folly an indication of insanity. A colonel of the Prussian Hussars, having lost all he had at the gaming table, and not wishing to face the world that frowns so severely upon poverty, went home, made arrangements, married a girl that he had seduced, and then shot himself.[3] A Greenwich pensioner who had his allowance stopped stabbed himself with his spectacles. In such cases there is no indication of the presence of mental disease. But although a man may destroy himself and still be sane, in a large majority of cases the act is done under the influence of insanity. And although in [155] some cases an attempt to commit suicide should be punished as a misdemeanor at common law,[4] yet in very many cases the individual should, upon the ground of insanity, be held irresponsible for his act, and exempted upon that account from punishment.

230. **Suicide the Result of Insanity.**—When suicide is the result of insanity it may either be the result of profound melancholy amounting to disease, or from a perversion of

[1] One-sixth of 4077 cases examined by Brierre de Boismont he assigned, as regards their causes, to insanity, one-sixth to drunkenness, one-fourth to domestic troubles and wretchedness. See "On Suicide," p. 100.

[2] "The suicide," says Aristotle, "does not undergo death because it is honorable, but in order to avoid evil."

[3] See the charge of the Lord Justice Clerk in Yates' Case, 20 March, 1847, Arkley's Rep. 238, at p. 341.

[4] Reg. *v.* Burgess, 1 L. & C. C. C. 258.

those instinctive desires for self-preservation which are the very foundation stones of our mental constitutions. There may exist what has been called suicidal monomania, and self-destruction may be had recourse to as a reasoned act to get rid of the awful load of unreasoned and unreasoning grief and despondency. Cases have come under the notice of almost every medical man who is in connection with hospitals for the insane in which patients have petitioned to be restrained from committing self-destrction. Individuals there are who are aware of their own weakness in the presence of temptation, just as those individuals who are liable at certain seasons to invasion by impulsive desires are aware of their impotency in the presence of that monarch motive which binds them to do his bidding, and so before the steed is stolen they try to shut the door. This is not the ordinary bravado shout of a boy who does not want to hurt himself, but makes a great show of preparations for instant death to frighten his relatives, and who, if he sees no preventive measures on the part of his friends, cries, "Hold me, or I'll shoot myself: I know I will." No, in the real cases of impulsive propensity to commit suicide a great number of circumstances will conduce to show that the person is really at certain times unable to control his actions, and the motive of the threat in the one case will distinguish it from the warning and demand for restraint in the other.

§ 231. **Case of Suicidal Insanity.**—Dr. Tuke quotes a case from M. Debreyne[1] as follows: "The patient, who was opulent, stated that he was perfectly happy, and free from any cause of suffering, with the exception of one circumstance which tormented him. This was the desire, thought, or violent temptation, to cut his throat whenever he shaved himself. He felt as if he should derive from the commission of the act *an indescribable pleasure.* He was often obliged to throw the razor away."

§ 232. **Power of Suggestion.**—As to the facility of the formation of such a sentiment as that just mentioned, we

[1] On Suicide, p. 82.

may remark that the very existence of suggestion is a very [156]powerful motive in all weak minds. Children will do anything they see done, and the mainspring of such actions is the simple thought or suggestion. We have heard a gentleman confess that when in a position to do any act which he had never done, and that he was not in the habit of thinking about, the very thought seemed to create a desire to do the act in question. Once standing beside a line of rail, the thought of how easy it would be to see death's treasured mysteries by throwing himself before the approaching train, he felt a desire or impulse to do so, which, however, he had no difficulty in resisting by the consideration of motives for not doing so. This gentleman was perfectly sane, but the type of act and motive is the same in health and in disease: the comparative power to resist is only infinitely less in the latter than in the former.

§ 233. **Suicide in relation to Delusions.**—As in all the other forms of partial moral mania, we find that it is frequently associated with intellectual disorder. Many men commit suicide under the influence of delusions. Voices from heaven urge them to offer themselves up as a sacrifice for a sinful world. M. Brierre de Boismont, in his work on "Suicide," has observed, concerning suicidal patients which had come under his cognizance, that eighty-three had hallucinations of hearing, thirty of sight; and in six there were illusions of hearing, thirteen of sight, thirty-three of smell and taste, and six of touch. We shall consider—1st. The modes of death; 2d. The age; 3d. The sex; 4th. Hereditary transmission; 5th. The seasons; 6th. The assigned motives in connection with this subject: as an intimate knowledge of the facts of diseased suicide will often enable the medical jurist to determine whether the act, or the attempted act, was due to morbid mental conditions or not. There is evidence of the necessity of a more thorough knowledge of suicide and its relation to health in the frequency of the verdict given by coroners' juries of "temporary insanity."

§ 234. **The Modes of Death.**—The statistics with regard to suicide are not in a satisfactory condition. In one table

we find that the greatest number of suicides is ascribed to drowning, in another to strangulation, and this cannot be accounted for by supposing that they are the statistics of different countries. But one thing we gather from all the tables that we have looked at with reference to this matter—that drowning, strangulation, and the use of firearms are more frequently the immediate causes of death in cases of suicide than are precipitation, the use of cutting instruments, or poison. [157]So far as we can ascertain, there is no guide to be found in the mode of death to the solution of the question as to sanity or insanity, as the same means are adopted by those who are sane as by those who are insane. Much ingenuity is manifested in many instances in the contrivances which are meant to procure death both by the healthy and diseased.[1] Weak-minded persons not unfrequently try to injure themselves by swallowing things utterly indigestible. And in one case a large number of pebbles were swallowed with this intention, but nature, although it could not digest the stones, put up with the inconvenience, and no injury resulted.

§ 235. **Age in relation to Suicide.**—Suicide does not occur very often early in life, although there are many instances of suicide committed by children on record.[2] The ages at which it is most common in France is shown, so far as such a table can give a correct indication, in the following comparison:[3]

Under 16	15	From 60—70	384
From 16—21	147	70—80	171
21—30	481	80 and upwards	20
30—40	540	Unascertained	110
40—50	647		
50—60	506	Total	3020

We may add the following facts as to suicide in Geneva, as stated by M. Prevost:

[1] See Dr. Winslow's Anatomy of Suicide, p. 283 *et seq.* Several interesting cases are given in the Reports of the Cri. Roy. Inst. for 1850, p. 20, and 1851, p. 13.

[2] "Children know nothing of that breaking from prison which is called suicide," says Victor Hugo (L'Homme qui Rit.)

[3] See Bertrand, Traité du Suicide, p. 73.

Age.	No. of cases in ten years	Men.	Women.
From 50—60	34	25	9
20—30	33	25	8
60—70	19	10	9
30—40	18	15	3
40—50	15	13	2
70—80	9	6	3
10—20	5	3	2
80—90	3	1	2

§ 236. **Sex in relation to Suicide.**—Suicide is less common amongst women than men, if [158]statistics may be believed, and we confess that we have no belief in the infallibility of figures. If we did regard them with the reverence that some would have us, we would look upon suicide in males to suicide in females as bearing the same numerical relation that three does to one. But, upon the whole, we should say that self-murder is more common in the stronger than in the weaker sex. According to the experience of M. de Boismont, there is no such peculiar relation with respect to suicide of the two sexes in the insane. Another opinion seems borne out by all the evidence which is to be had in the case. Attempts at suicide are not at all infrequent during pregnancy. Amongst the sane more unmarried persons of both sexes commit suicide than married; and when we turn to the insane, we find their relation reversed.

§ 237. **Hereditary Transmission in relation to Suicide.**—We must say we do not believe in the hereditary transmission of a tendency to commit self-murder as it is ordinarily understood. That many cases are to be found of father and son and grandsons committing suicide, or making the attempt, we are prepared to hear, and already believe; but we are inclined to think that in such cases the suicide was dependent upon a mental disease, which was transmissible, and upon circumstances which tried the individual and found him unable to stand the test. We are loath to credit the descent of something which has no real existence, except in so far as it originates in lack of mental power as regards a particular class of circumstances or objects. But we are most willing to credit the inheritance of tendencies, of strength or weakness, of disease or health. If education and nurture

teaches the child to have the same tastes and the same desires as its father, and it walks in his footsteps, we should expect to find the same form of disease, in relation to environment, developed, and probably the same or somewhat similar manifestations, by means of acts, resulting therefrom. Besides, so great is the power of suggestion, that the fact that a father committed suicide would have some considerable influence on the actions of the son. Example is not always merely the result of the reasoned advantages of a certain class of acts: it is as unreasoned a following as that of sheep after one another through a hedge. A boy once confessed to us that, having found a pound note, he meant to spend it, until he thought, from the fact of no inquiry being made for it, that it could not be a good one. The mere force of the suggestion restrained him from [159]making use of the note, and he had it in his possession for years. The proof of our proposition is found in the fact that the tendency to hereditary suicide, if we may use the expression, is found in those families where there is an association between suicide and insanity, and not in those families where the sole symptom of the disease was the suicide, or in those cases where the suicide is due to monomaniacal impulse. We know of one family in which the mother was insane, in which three of the children committed suicide, and two are at the present time subject to mania, with lucid intervals. Rush tells the story of a family. A lady was subject to suicidal insanity. She had two daughters, and they were similarly affected. She had two sons, who were twins: the one was found with his throat cut, the other almost in the presence of his wife killed himself by cutting his throat.

§ 238. **Suicide and the Seasons.**—Suicide is most common in spring and summer, but, as Dr. Radcliffe has observed, "it does not follow that this arises solely, or even largely, from the meteorological character of the two seasons." Everybody would have thought that November, with its dreary drizzling rain, its clinging mists, its gray sky, and its doleful winds, would have conduced to suicide more than the cheery spring, with its opening flowers, pleasant breezes, and

"Smale fowles maken melodie."

The epidemics which are authenticated have almost invariably taken place in June and July—the "dog-days." And we have quite recently been shocked by the announcement of the suicide of a well-known man of letters, which is ascribed to "the excessive heat."[1] We quote a table from Dr. Winslow's book. Of 133 suicides, there were in—

April	19	March	10
June	17	November	9
August	17	September	6
July	15	January	5
October	14	February	5
May	13	December	3

There are some most interesting statistics in Dr. Radcliffe's paper already quoted.[2] With regard to the distribution of suicides in the [160] different counties of England and Wales, his analysis shows that Middlesex produces most self-murders, Westmoreland stands next in the scale, and Rutland and Cornwall stand lowest in the list of English suicide-producing counties. There is, of course, some close connection between instruction and suicide: the higher the civilization and education in a county, the more suicides do you find in it. But a comparison of the ranks of society shows that it does not take place so frequently in the higher ranks, although they are better educated, as in the lower middle, showing that a little knowledge is a dangerous thing, and that it is for the want of the higher motives of morality that it really does take place so commonly amongst tailors, shoemakers, and small traders. But we are going out of our way to discuss a question when many lie to our hand—always a bad policy. With regard to the time of day at which self-murder is most commonly committed, we believe that we are correct in stating that more take place during the day than under "the blanket of the dark," more in the morning than in the evening.

§ 239. **Assigned Motives for Suicide.**—The assigned motive of the suicide, when it is the result of impulsive monomania, is almost always trivial. There is a whimsical

[1] Prevost Paradol died about 20th July, 1870.

[2] English Suicide Fields. By J. N. Radcliffe. Medical Critic and Psy. Journal, vol. ii., p. 701.

littleness about the excuses and reasons given by the individual, when discovered in the attempt, which shows that he fails to appreciate the true cause of the sad symptom. "I couldn't help it"—the old excuse which has been since the beginning, and will be to the end. The laying of vice upon the shoulder of fate, who shall bear the blame also, but carrying all the merit of doing virtuously ourselves. But that reason, "could not help it," is the best excuse of suicidal insanity, properly so called, and it is for the medical jurists to discover whether it is true or not. Two lovers died in each other's arms, and asserted in a letter to the world that they were too happy to live. Sir S. Romilly died in order that he might be reunited with his wife, the grief for whose death weighed him down. A gentleman is said to have killed himself in order that he might be saved the trouble of tying his garters of a morning. And the desire of notoriety is not an uncommon inducement to the commission of suicide, and irritation is, as we have pointed out, the cause of many suicides. All these motives might have influence over weak minds in which we could not discover any morbid element, but they will be found to have a greater influence over [161]those minds which are weakened by disease.

§ 240. **Relation between Suicidal Mania and Homicidal Mania.**—We find that in many cases the same mind which would be liable to be influenced powerfully by inducements to suicide would also be open to the impulsive temptations to homicide. The two acts are somewhat closely connected in thought, and the frequency with which death has been sought by the sane to avoid the consequences of murder must, to minds weakened by disease, connect those acts and propensities still more closely. And the fact proves that they really are very frequently manifested by the same individual, and much difficulty does arise in practice owing to this circumstance. We come then to—

Part VI.—Homicidal Insanity.

§ 241. **As to the Existence of Homicidal Insanity.**—Much ingenuity is wasted in this world, or, at least, only serves an indirect purpose, not that which it was intended

to subserve. So it is with much of the reasoning about homicidal mania. How many attempts have been made to prove that an impulse to kill does really exist? How many efforts are made to prove all the Judges in England who won't believe in the existence of such impulses a parcel of very stupid old gentlemen? How many cases, in which it seemed no reasonable man could doubt that an uncontrollable desire to take the life of another did really exist, have been collected and carried from one reservoir of facts into another? How many indignant appeals have been made to the country at large not to sanction the horrible injustice of impressing its principle of the certainty of punishment upon the public, by means of cruelty to the persons of poor lunatics, who were as innocent of the crime as a horse, which carries a man to the place where he means to commit a theft, is of the robbery? And when another comes to speak of the same subject, he must be guided by the tracks of his predecessors. One's wheels run in the ruts. And all that a new comer can hope to do is to avoid one or two of the inaccuracies of which those who have gone before him have been guilty.

§ 242. **Homicidal Impulse Explained by Propensity.**— Some writers, in attempting to find out what homicidal impulse really means, have sought assistance from the dead words of the phrenologists. They have found out what they call a propensity to destroy or a faculty of destructiveness. This, upon the face of it, looks a great discovery. A propensity to destroy in sane men, an exaltation of the tendency in insane men, gives you inordinate propensity to destroy— to destroy what? Why, life; *i. e.*, a homicidal impulse. But when they attempt to show that there is some such propensity [162]in mankind they are not so successful. They reason that an all-wise Providence would probably give man such a propensity to destroy because there are many things in man's environment the destruction of which benefits humanity. How easily men reason as to what God ought to have done. But is this propensity theory not infinitely clumsy? And does it not violate all the laws of economy? You give man

a propensity to destroy. The propensity does not tell him what it would be well to destroy. Thought and experience do that. Now, on this hypothesis you require your propensity and your reason, while it is quite evident that reason could do it quite well enough without any such assistance. By thought a man becomes convinced that the removal and destruction of a certain animal or object would conduce to his happiness, and by thought he thinks how that can most effectually be done, and he comes to the conclusion that it can be best effected by destruction or death, and he destroys or kills it. Where is the necessity for your propensity? Away with it, then, if it is of no use. Does a man require a propensity, when he is hungry, to induce him to kill to satisfy his hunger? Does he require a propensity before he can bait a trap for rats? Has the housewife a savage pleasure in the mere fact of death when she sees the patent fly-paper strewn with dead insects? Does the fact that some savage tribes kill more animals than they can use for food prove anything as to the existence of a propensity to kill? Or does it only prove that they take an intense pleasure in the exercise and exhibition of skill, that they do not care anything about the life or death of other animals, which is much too remote a fact from the current of their lives to affect their somewhat limited sentiments, and that they are utterly careless as to the future, thinking that the morrow has a personal interest in looking after its own affairs. That a blow is given for a blow is no proof of a propensity to destroy, as some have argued,[1] but is a proof of the existence, under injury, of a sentiment we have denominated "anger," a characteristic feature of which sentiment is a desire to injure the cause of the mental irritation. Neither can the reality of this so-called "destructiveness" be augured from the wrath which children vent upon inanimate objects when injured by them. Anger, like all real strong passion, tends to the externalization of mind in acts. And those acts have a certain complexion, a certain bent: they are [163] intended to injure the object that injured us. It is reason alone convinces us after

[1] See Journal of Mental Science, July, 1863, p. 197.

much experience that we do not injure the cause of that injury by a blow, unless the object of our anger is endowed with life. Even the strongest anger is guided by thought.

§ 243. **Rational Explanation of Impulse.**—So far, then, we have seen no reason to believe in a propensity to destroy or kill. There is a tendency in human minds to view and consider the possibilities of change or of no change. And an habitual mode of thought will make a man prefer one of those courses, even somewhat irrationally, if the mind is not very powerful, and this preference is strengthened by a necessity for consistency and the like. So men are conservatives or radicals, and in so far one may have an acquired propensity to destroy, or at least to change, but in no other way that we can see. Then let us examine again the possible motives of men, as the sails which the winds of passion fill. A man kills another in anger, or he kills another because they both love the same woman, or he kills another because he has a piece of property that the murderer desires to possess. Such are some of the motives which induce to the destruction of life. Now, the law has defined murder as "the killing of any person under the King's peace *with malice aforethought* express or implied."[1] And in each of the three cases above supposed there seems reason to think that the indictment which runs to the effect that the prisoner did on the day named "feloniously and wilfully, and of his malice aforethought, kill and murder" the deceased,[2] would lie.

§ 244. **Anger and Punishment.**—Now, the type of all punishment is to be found in the sentiment of anger which we have referred to above. When a disease came upon the earth in times past, the peoples thought the gods were angry, and the smoke of bulls and rams went up to appease them. In human anger the injury is the most prominent idea, and almost inevitably suggests the punishment, and therefore we find blow given for blow. And we find that some codes of laws have so far proved slavish to the type, and have decreed an eye for an eye and a tooth for a tooth, and, indeed, in our

[1] Bla. Com., p. 195; 3 Inst. 47; 24 and 25 Vic., c. 100, § 6.
[2] 24 and 25 Vic., c. 100, § 6.

country in the reign of Edward I. incendiaries were put to death by fire, as was also the practice in some Gothic constitutions. But although anger is the real type of all punishment, and the object of anger and the object of punishment are the same—in the one case to repel injury which might be again [161]offered to the individual, in the other to repel injury which might again be offered to authority—punishment, as put in force in a highly cizilized country, has lost much of the essentially human property which it had in earlier times.

§ 245. **Punishment and the Objects of Punishment.**— As individuals learned by experience that there was no real advantage to be gained by venting anger upon the inanimate, as they discovered that it was only the animate that could experience, that could be taught, and therefore could be deterred by hostile demonstrations, so the State learned that it was expedient to punish only those who were animate in the full sense of that word, those who were not bound hand and foot by circumstances, such as *duress* or absolutely diseased organism, as they were to all intents and purposes unable to experience, incapable of learning, and therefore could not be deterred by any such punishment. The State might have argued that, although no individual who is ever placed in these circumstances will ever learn that it is well to refrain from certain acts, persons in other circumstances will: just exactly as the child might have reasoned, "If my hitting the gate does not teach the gate not to hurt me again, it will show the boys who are looking on that I am not to be trampled on even by a gate." But the fact is, that neither of the supposed persons did reason thus, and so it comes about that law exempts from punishment all such as can be proved to have been, as it were, inanimate, and therefore, in the true sense, "not guilty" of the crime with which they are charged. Well, when that crime is murder, the law does, under certain circumstances, exempt an individual from punishment. If a man kills a neighbor in a fit of mania, he is not held responsible: if he kills his neighbor under the influence of an adequate delusion, concerning facts which, if true, would justify his killing the individual, he is not held responsible, and the same rule holds good of a person believing in an illusion.

Finally, the law holds that individuals laboring under amentia, dementia, or melancholia, and who have no knowledge that they are doing right or wrong, what is commanded or forbidden, are to be exempted from punishment in case they commit murder.

§ 246. **Murder in relation to Morbid Impulse.**—But this is not enough: it is believed that in many cases individuals may have been sane until just before the commission of the crime, and that the murder may be the first indication of insanity; and it is impossible to deny that this may be, and is sometimes, the case. There is no prescribed form of beginning to be mad, and there is no vagary, no act which, from its [165] apparent motivelessness and absurdity, may not be the first external manifestation of the internal disease. So far, then, everybody is at one—that murder is committed by insane persons, and that an act of murder may be the first indication of the presence of morbid mental conditions. In a former part of this work we explained at some length how the action which was done with an overwhelmingly powerful motive (if it is trivial in comparison with the ordinary motives of mankind) may, and does, give an appearance of motivelessness and impulsiveness. Now, this impulsiveness, which is due to the incapacity of the mind to be influenced by all the tendencies of ordinary humanity in an attitude of choice, has many analogues in that part of nature which is only half animate—if we use animate as meaning life with choice, in which sense we should not call plants animate, and in this sense moral notions would be coëxtensive with animacy—that part of nature which is out of the dominion of immediate consciousness. Thus, we find that one man cannot choose but laugh when he is tickled, although the time and place and presence may make it most imprudent: if he was to die for it he could not help it. After he has laughed he may be sad enough because he made a fool of himself, but the next time you find him in a public place, with every motive which can be brought to bear on a man to make him grave, and tickle him again, he will laugh till his sides are sore. Now, in hysteria we find this condition not produced by the actual volition of another, and the actual acts of another, but by

disease in the organism of the individual. Laughter and tears come, and real voluntary tears may be shed afterwards, but no vows will keep away that laughter and those tears, which are just as much an attribute of the inanimacy of man's nature as inertia is. No will can abolish inertia. That a man can reason about a thing after it has happened, and can with perfect accuracy place it in the category of right or wrong, does not prove that it was in his power to do or to abstain from doing it, as the case may be, at the time. If a man gets drunk, and during his intoxication he commits a crime, the law very properly holds him guilty of the crime committed by him during his temporary incapacity to govern himself, because the law argues that a man ought not by any act of his own to incapacitate himself from ruling his conduct according to law and justice.[1] If, however, it could be proved that the man had not made himself [166]drunk, if it could be proved that another, by force, fear, or fraud, made him take that which caused his temporary incapacity, then it appears to us to be the best opinion that he would not be held responsible for any criminal act committed by him during the drunkenness, if the intoxication was of such a nature as to preclude the possibility of his knowing what he did. So in cases in which this irresistible impulse occurs it seems unfair to punish the individual for any act which was entirely beyond his control, as the incapacity was not willingly produced by his own deliberate act. True, it may have been caused by his own acts, as a man's past life is a cause, in the true sense of the word, of any subsequent fact of his being. But so in a case of duress it might be argued that the man, if he had never cultivated the society of his friend, or if he had never told him that he had £1000, would not have been subject to duress, and that, therefore, the duress was brought about by his own act. But these causes are much too remote for the law to take cognizance of, and if a real impulse to kill—using the phrase as we have above explained its meaning—can be proved to exist, if it can be shown that no amount of certainty of punishment was a motive to him, and that had punishment for the act been as absolute a certainty

[1] See per Parke, B.; Reg. v. Thomas, 7 Car. & P. 820.

as one of the laws of nature (*e. g.*, that if a man puts his hand into the fire he will be burned,) it would not have restrained the act, and that this is due to disease, then we hold that the law ought to exempt that individual from all criminal responsibility. One or two more words concerning this impulse, and how it comes to be an impulse to kill (for we have repudiated the propensity theory,) before we turn to some of the cases which have been adduced to prove its existence.

§ 247. **Homicidal Impulse considered.**[1]—This impulse, which is just the ordinary passion for any desirable object unrestrained by any motive, and that due not merely to an excess of the passion, but to the diminished power of appreciative motive resistance, which is due to disease, is peculiar in that it is an impulse only in one direction to the external world. It may be to theft, it may be to suicide, or it may be to murder! How is this? How comes it that a man who is influenced by ordinary motives in every other relation of life is uninfluenced in this one relation? And second, how comes it that this impulse is satisfied when it has acted with one spasmodic effort? Why does the homicidal maniac cease to kill after having murdered one or two people? If a man [167] has lost all power over his actions in one direction, why does this *vis* of nature, which cannot be governed by such a governor as the engine mind has over it, wear itself out with one or two acts of atrocity? These are questions of the utmost importance, and little or no attention has been bestowed upon this part of the subject.

§ 248. **The Limitation of the Impulse.**—Why should a man's relations to the world be injured in himself, by disease,

[1] The pathology of impulse has been considered fully in another place. One fact is always to be borne in mind, and that is the close connection which exists between homicidal impulse and epilepsy. What seems an isolated manifestation of insanity is really associated with serious brain lesion, which results in discharges of energy through the habitual grooves of feeling. If the man is morose or melancholy, this bursting energy may result in murder or suicide. The real character of the act depends upon the habitual character of the thought of the individual, just as we find epilepsies always affecting the most used muscles first, so we should expect to find it affecting the most used thought or series of thoughts. It is to this circumstance that the form of the moral mania, whether homicidal, suicidal, or other, is, we are convinced, due.

only in relation to a very limited class of objects? Just because it is a law of nature, which is to be found everywhere. The man who sees a decollated head, which is always before his eye, the man who sees a "dagger of the mind," yet sees other objects with perfect distinctness, he can tell you the color of a rose and the shape of a mountain. We find it, therefore, in disease, and cannot say why. It may seem extraordinary that one drug should contract the pupil of the eye, another flush the face and neck, another give ringing in the ears, and so on. We only sail round about it when we give for a reason the words of Dr. Watts, "It is their nature too." But we find the same law in the mental phenomena of health. Men have prejudices, which are the backstair influences of mental life. One man will be miserable for a week if he has eaten flesh on a Friday, while another will feel unhappy if he has not. One individual will feel nervous if there are thirteen persons at table, if two magpies cross her path, or if a friend married in May. And yet all these individuals are sane, and can reason well and soundly concerning other ordinary phenomena. One man will sicken over something that another enjoys. But we have considered this question at some length in an earlier part of this work.

§ 249. **The Satisfaction of the Impulse or Desire.**— Why is the impulse satisfied by one act? Why, if a man has lost the power of choice, and a comparatively insignificant motive binds him abjectly, why should that insignificant motive lose its force at once upon the completion of one act, according to its mandate? This, again, is just a fact in nature, and if analogy brings one nearer to knowledge—as it is supposed to do—there are many facts of an analogous character which can be mentioned. The desire for an object believed to be desirable ceases for a time on the attainment of the object sought or wished for. It may return, but in the meantime there is a *sate*. So it is with the death of another, or the death of some one, or the cutting of a throat—for death, as an actual object, is not often the object of the homicidal maniac's desire—when it is done the individual is satisfied: the wish may return, and does [168]return, as hurtful feelings come at intervals to healthy men, but it is gone in the mean

time. Then, the nature of the act which the individual has done, the result of the impulse is so startling, so likely to induce consideration, so well calculated to call up ordinary motives, horror, sorrow, consternation, and the like, as to deter from the whimsical motives which are to be found in the insane person's mind. So powerful is this fact, that it calms a man's anger, if before he was half mad with fury. So powerful that even upon the maniac such an event, associated as it is in mind with all those motives which make the book of conscience—which makes cowards of us all—will have a calming effect. And the actions of the insane upon such an occasion are often more rational than at other times.

§ 250. **In many Cases Homicidal Impulse would be restrained by Punishment.**—Such being the fact, then, we proceed to state some of those cases which have been recorded as proofs of the existence, and as indicative of the peculiar modifications, of this mental fact—this irresistible impulse. We would say, however, that many of the cases which have been given, even by high authority, do not seem to warrant any opinion save that there are many cases of homicidal impulse which might be restrained by the fear of certain punishment, for we are convinced that an immunity from all disagreeable consequences is one means of increasing the frequency of a real insane impulse to kill, as it is of increasing the frequency of the common sane desire to do the same act.[1]

§ 251. **Cases of Homicidal Impulse.**—Cases of homicidal insanity are very numerous, and much attention has been directed to this kind of emotional insanity. The works of Esquirol, Rush, Prichard, and Marc, contain many interesting cases. In this place we shall quote only a few of those.

In France, in 1854, a boy shot his stepmother. He confessed the act, but said it was the result of a mysterious, irresistible impulse, [169]a term with which reporters on his

[1] Reference to the following works may be made: De la Folie cons. dans ses Rapports avec les Quest. Med. Jud., par C. C. H. Marc; Dr. Ludwig Meyer on "Mania Transitoria," in Virchow's Archiv., vol. viii., p. 192; M. Brierre de Boismont in the Annales Méd. Psych., vol. viii.; Prichard "On Insanity in relation to Jurisprudence;" Bucknill and Tuke's Psychological Medicine, etc.

state of mind (including Calmiel) remark he could not have been familiar. He admitted an aversion to his stepmother. There was no disorder of the intellect apparent. There was hereditary predisposition to insanity on both sides.[1]

"An hysterical female, nurtured in affluence, buoyed up by brilliant prospects of the future, is exposed to adversity, feels sensitively every privation, even every duty imposed in her new position, as an injury and offence offered to pride, becomes estranged from her friends, who are associated with her in misfortune—is aggrieved by the look of a parent, and attempts to kill her. This person is now separated from the objects of her dislike and the circumstances which produce this estrangement, but the look rankles in her memory, and the sanguinary impulse returns. She is at one time a weak, weeping girl; at another, a formidable Amazon. She passes from the piano to wild declamation, but in all these states, if capable of concentrating and confessing her thoughts, she admits her thirst for revenge because she was looked at. This passion has widened its range, and now includes all who deny her unbounded homage, and, as is often the case, is accompanied by a tendency to self-destruction."[2]

> "For of his hands he had no governement,
> Ne car'd for blood in his avengëment;
> But, when the furious fitt was overpast,
> His cruell facts he often would repent.
> Yet, wilful man, he never would forecast
> How many mischievs should ensue his heedlesse hast."

"A man," observes Esquirol, "aged thirty-two, tall, of a spare habit of body, nervous temperament, and mild disposition, had been carefully educated, and was a cultivator of the arts. He had suffered from cerebral affection, of which he had been cured for several months. He had been in Paris for two months, and had led a perfectly regular life. He entered one day the Palais de Justice, gained access to the hall of the Pas Perdus, threw himself upon an advocate, and seized him by the throat. He was arrested, conducted to prison, and committed to my care on the same day. At my first visit, which was made on the following morning, he was

[1] Annales Medico-Psychologique, April 5.
[2] Dr. Browne, Crichton Inst. Rep., 1849, p. 13.

calm, tranquil, without anger or resentment, and had slept the whole night. On the same day he designed a landscape: he remembered very well what took place on the previous evening in the Palais de Justice, and spoke of it with indifference. He had, however, no recollection either of the motives or circumstances attending the act, and entertained no regret on account of it. He replied politely to my questions, without dissimulation, and with the accent of truth, [170] 'I went to the Palais de Justice as I would have gone anywhere else, to the Palais Royal or to the Tuilleries, like an idler, who was walking before me without any intention or special purpose. Not only had I no ill-will against this advocate, but he was entirely unknown to me, nor have I ever had an interview on business with any advocate whatever. I do not understand how I could have met with a disaster of this kind. It might have taken place anywhere else, and I might have been directed to any other person.' On my remarking to him that nothing but an instantaneous disorder could explain this act, 'You can explain it as you please,' he said: 'as for myself, I do not feel ill, and I am unable to say how this event has happened to me.' During the three months that M—— was subject to my observation, he never was for a moment incoherent, never delirious, and never committed an unbecoming act: he was polite and obliging to all, amusing himself with drawing or reading serious books: he preferred solitude, but without affectation."[1]

In 1869, Besgrove was tried and found guilty of murder: he was incarcerated in Broadmoor Asylum. It was proved at the trial that he had seen a man—of whom he previously knew nothing—lying asleep in a field; that he had taken a large stone and dashed out his brains, and then laid himself down and gone to sleep close to his victim.[2] Besgrove was an epileptic, and his mind had probably become weakened by the disease until a simple mental suggestion became powerful enough to be the motive of the gravest act. We have, however, already sufficiently explained our theory of the force of insane impulses. In this place we would only give a few

[1] Malad. Ment., vol. ii., p. 102.
[2] See Blandford's Insanity and its Treatment, p. 173.

cases collected by some of the ablest observers, which seem, upon the most careful consideration, to raise our hypothesis to a higher state of certainty.

Dr. Browne, in his report of the Crichton Royal Institution for 1851, says: "Among the persons added to the community during the past year is a person who confesses that he forced his entrance into a court of justice by means of a drawn sword; another who boasts that immediately on his liberation he will sacrifice to his lust of vengeance or power one cotton-lord and a family of weavers; a lady who paints herself in the darkest and most hideous colors; another female who admits herself to be a Thug in fact, and an [171]infanticide in intention; and a philosopher who holds massacre to be the right of the strong. These self-accusations are in whole or in part hallucinations. Their absurdity, grotesqueness, and inconsistency with the original disposition of the individual, is a principal proof of their fabulousness, and protect from legal consequences, but at the same time do not separate the condition of mind under which they arise and are perpetuated by any broad line from that which may precede, attend, or follow the actual commission of the atrocities imagined."[1]

"M. N——, aged twenty-one years, constitutionally sad and morose, and the moral faculties but slightly developed. At eighteen he was increasingly sad, but neither his conversation nor his actions indicated insanity, but he declared that he felt a sort of impulse which led him to murder, and that there were moments when it would afford him pleasure to shed the blood of his sister or to stab his mother. When the horrible character of such desires and the penalties attached to their gratification were pointed out to him, he calmly replied, 'At such times I am not master of my will.' More than once, after embracing his mother, he became flushed, his eyes flashed, and he cried, 'Mother, save yourself, I am going to cut your throat.' Soon after which he was calm, shed tears, and withdrew. For six months, during which this young man was tyrannized over by this horrible impulse, he slept little, suffered from his head, was averse to

[1] Report for 1851, p. 16.

seeing any one, was insensible to the annoyances of his family, but manifested no sign of a disordered understanding in his conversation. He had no delusion, and had no motive for these acts. After eighteen months' treatment in an asylum he lost the homicidal impulse, returned home, and did not relapse."[1]

There is a case reported at length by Dr. Skae in the Report of the Morningside Asylum, for 1850, of a female who was tormented by "a simple abstract desire to kill, or rather, for it took a specific form, to strangle," without any disorder of her intellectual powers, and "who deplored in piteous terms the horrible propensity under which she labored."

The insanity which affected Mary Lamb (Charles Lamb's sister) was of this sort. She had been suffering for sometime from nervous depression, which may have been due to her assiduous attention to needlework during the day and to her mother during the night, which was necessitated by the lean subsistence which they enjoyed in that poor little house in the by-street which runs south from Holborn. She had been moody and ill for some days previous to the first attack of her malady. On the first occasion, just before dinner, she seized a caseknife which was lying on the table, and pursued a girl who was in the house round the room, scattering the knives and forks which were on the table, and at last, in a wild frenzy, stabbed her mother to the heart. Charles Lamb prevented further mischief. But enough had been done. His mother was dead: his father, who was in his dotage, had been wounded on the forehead. Mary was sent to Hoxton Asylum, which then lay amongst green fields, and not, as now, amongst narrow lanes of a thick-crowding population. She recovered her reason in a short time, but was always subject to recurrent attacks of insanity. In her case, however, as in most others, if we would only recognize the fact, there were easily recognized premonitory symptoms. She herself used to be aware of the incursion of the disease, and would place herself again under restraint in the asylum before the disease actually supervened.

[1] Gazette des Tribunaux, September, 18, 1838; Marc, vol. ii., p. 35. Other cases are given by Marc, vol. i., pp. 49, 56, 161, 241–243, 248, 317, and vol. ii., pp. 27, 71, 92, 97, 112. See Journal of Mental Science, vol. iii., p. 346.

"A woman never insane enough for confinement, said to me," says Dr. Conolly,[1] "that she sometimes lay awake in the night looking at her husband, and thinking how easily she might kill him with the broom-handle, and that she awoke him, that his talking might drive these thoughts out of her head."

[172] "An old lady," says Dr. Maudsley in an article upon homicidal insanity, "more than seventy years old, for the most part lies back in an easy chair, with her eyes closed, and moaning as though in great affliction. She might seem incapable of any exertion: every now and then, however, she suddenly jumps up, without any warning, and rushes upon her daughter with the design of strangling her. When this paroxysm comes on, two people can scarcely hold her, but as soon as it is over, she sinks down utterly exhausted, and panting, says, 'There! there! I told you: you would not believe how bad I was.'"[2]

The case of W. D——, which is reported by Dr. Crichton Browne, is one of interest. "He was admitted into the asylum (Derby County) under the escort of three powerful men, so dangerous was he considered. He had been previously in confinement in Bethlehem Hospital, London, from which he was discharged uncured. During his residence there, to judge from his own description, he had been labouring under melancholia. Since his discharge he had resided at home, and had there taken considerable quantities of morphia to relieve the depression of spirits under which he laboured. He had been perfectly manageable until within a few days of his admission into the Derby Asylum, when he became more than usually miserable, and began to manifest destructive tendencies. He had several times made desperate and determined attempts to murder the men who were placed in charge of him, and had nearly succeeded in strangling one. He was a hale stout man, of neuro-lymphatic temperament, pale and anæmic, with an expression of great wretchedness, and a small and feeble pulse. Soon after his arrival, he made several attacks upon the attendants, warning them first to

[1] Croonian Lectures, p. 92.
[2] Journal of Mental Science, vol. ix., p. 337.

beware of him, for he felt he must 'be at their throats.' D—— was perfectly aware of the painful nature of his position, mourned over his insanity, and especially over his homicidal desires, which he stated that he only experienced in paroxysms. These paroxysms were very frequent when he was first placed under observation, but gradually diminished in number. He at first conversed freely about his homicidal tendencies, and the uncontrollable inclination which he felt to tear his clothes and break windows, but as he improved, and as these past away, he appeared ashamed of them, and ultimately repudiated [173] them altogether. When he did speak of them, he declared that they were quite inexplicable to him, and that they had no connection which he could discover with his desponding state of mind."[1]

A case has come under our own notice. It was that of a woman whose insanity was indicated simply by an insane desire to throw her children into the fire. Her husband had been unfaithful to her and to his marriage vows, and that circumstance brought on mental depression. So horrible was the temptation, so persistently did it tyrannize over her, and so powerful did it become, that she was unwilling to trust to her own power to resist, and placed herself in a lunatic asylum. In this case, the homicidal impulse was accompanied with a desire to do herself an injury. She disliked seeing a knife, as it tempted her to commit suicide. She had prayed to be freed from these temptations. Such a temptation seems to warrant the name that has been given to them, of "reflex motives." The facility seems to make the desire. There is a reciprocity betwixt matter and spirit.[2]

M. H——[3] was admitted into the West Riding Asylum upon the 12th December, 1867. The medical man who signed the certificate observed that she was constantly stupefied or muddled, that she was occasionally vicious, that she assured him

[1] Journal of Mental Science, vol. ix., p. 208.

[2] An interesting case of homicidal insanity is given by Dr. Lockhart Robertson in the Journal of Mental Science for July, 1860. See also Psychological Journal, vol. iii., pp. 49, 51, 465, and vol. iv., p. 560; and Rex *v.* Brixey, Med. Gazette, vol. xxxvi., pp. 166, 247; Reg. *v.* Stowell, Med. Gazette, vol. xlvii., p. 569; and Journal of Mental Science, vol. xiii., p. 548.

[3] For the two cases which follow I am indebted to the kindness which placed the Case-Books of the West Riding Asylum at my disposal.

she had a desire to murder her boy, and that when that feeling came over her she found it almost impossible to restrain herself. She was forty-nine years of age, she had been in the workhouse, and the insanity had continued eight days before her admission. When she became an inmate of the asylum, she had a delusion of hearing. She heard a voice, and believed it was the voice of the Devil. The voice urged her to destroy her son as Samson destroyed the lion. There was no other symptom of insanity. She upon one occasion manifested a tendency to excitement, and that was after having had an interview with her husband and children. On the 11th of April, 1868, her bodily health was improved, and there [174] was decided improvement of her mental condition. She no longer heard the voice, and had ceased to fear that she might be impelled to do some criminal act. She subsequently became industrious and cheerful, and expressed a wish to return home. She was discharged upon the 29th of April, 1869.

P. S—— was twenty-nine years of age, and a Jewess. She was admitted into the West Riding Asylum upon the 12th day of June, 1869. The medical man who signed the certificate stated that he had observed despondency; that her friends informed him of the fact that she was sleepless and rambled about during the night, and she confessed that she was constantly tempted to destroy her children. She had been confined about four months previous to her admission. Her recovery had been rapid up to the eleventh day after the confinement, when she ate some cabbage, which brought on diarrhœa, from which she has suffered at intervals since that time. The history of this case seems to be that, while she was in bed, a neighbor came to see her, and told her about a story she had seen in a newspaper of a woman who had burned her child. From that time forth she suffered, at intervals, from an insane impulse to destroy her youngest child by pulling out its tongue with her hands, and after a time the same desire influenced her with regard to all her other children. She gave a reason for the peculiar form of the infanticide meditated. She said that she had once known a man with a bad tongue which had to be operated on, and it was that circumstance which gave her the idea of pulling out her

children's tongues. At the time of the impulse she was quite clear as regarded other things, was conscious of all that was going on around her, and, with this exception, was perfectly calm and sane. She complained of headache and numbness in the head, and when she had the murderous tendency she suffered from pain and palpitation of the heart. She also assured those about her that she had disagreeable dreams, and often thought that she was going to be hanged: she was also nervous: at one time was liable to illusions of sight, but she never thoroughly believed in them, and it was only when she was very weak that she had these illusions. They were of rats and monkeys, and were suggested by the circumstances of her environment. The house she had lived in was infested with rats. There was insanity in the family. Her mother had suffered from puerperal melancholia for two years, and a sister had been insane. [175] She tested her own recovery: assured the medical officers that she had seen and kissed little children without a recurrence of the murderous tendency. She ultimately recovered, and was discharged upon the 5th October, 1869.

§ 252. **Comments on the last Case.**—This is certainly a most interesting case, and illustrates the theory we have advanced. Here we find the omnipotence of simple suggestion over a weak mind. First, the suggestion of the killing: the neighbor's story excites the desire to kill, and the remembrance of the man who had disease of the tongue, and who was operated upon in consequence of that disease, suggests the way in which this insane impulse should be externalized. Besides, in this case we have the peculiar character of irresistibility at the same time that we have an oppressive feeling of the unlawfulness of the act. So much did this idea of the unlawfulness oppress her that she carried the idea into her sleep, and often dreamed that she was going to be hanged. No case could better illustrate the principles laid down above. No case could be more instructive with regard to the relations which insane persons who labor under partial moral mania occupy with regard to the State.

§ 253. **Concluding Remarks.**—It would be easy for us to

enumerate and dwell upon many other kinds of moral monomania as other writers have done, who have expatiated on pseudonomania, oikeiomania, pantomania, religious mania, and others besides; but sufficient has, it seems to us, been said for all practical purposes, and with the statements which will properly fall into the chapter upon the legal relations of this disease, enough of information will be found in these pages to enable the recognition of this disease, and to enable the reader to understand the relations of those who are affected by it to the law of the land.

CHAPTER X.

THE LEGAL RELATIONS OF MORAL MANIA.

§ 254. **The Scope of this Chapter.**—No questions have become more prominent in connection with medical jurisprudence in recent years, none have been so diligently argued and widely discussed, as those of the existence of moral insanity and irresistible impulse. We have necessarily devoted considerable attention to these questions in this work, and have discussed them at some length in the preceding chapter. The real difficulty which is felt in connection with this question is the reconciliation of the seeming contradiction in the assertion that the moral nature of a man may be perverted and his intellectual nature remain unaffected by the disease. It is not to be doubted that there are diseases which localize their effects in relation to a certain class of actions, a certain set of circumstances, or certain individuals. The Lord Chief Justice of England has spoken thus concerning this matter: [195] "It is not given to man to fathom the mystery of the human intelligence, or to ascertain the constitution of our sentient and intelligent being. But whatever may be its essence, every one must be conscious that the faculties and functions of mind are various and distinct as are the powers and functions of our physical [196] organization. The senses, the instincts, the affections, the passions, the moral qualities, the will, perception, thought, reason, imagination, memory, are so many distinct faculties or functions of mind. The pathology of mental disease, and the experience of insanity in its various forms, teach us that while, on the one hand, all the faculties, moral and intellectual, may be involved in one common ruin, as in the case of the raving maniac, in other instances one or more only of these faculties or functions may be disordered, while the rest

are left unimpaired and undisturbed; that while the mind may be overpowered by delusions which utterly demoralize it and unfit it for the perception of the true nature of surrounding things, or for the discharge of the common obligations of life, there often are delusions which, though the offspring of mental disease, and so far constituting insanity, yet leave the individual in all other respects rational, and capable of transacting the ordinary affairs and fulfilling the duties and obligations incidental to the various relations of life. No doubt when delusions exist which have no foundation in reality, and spring only from a diseased and morbid condition of the mind, to that extent the mind must necessarily be taken to be unsound, just as the body, if any of its parts or functions is affected by local disease, may be said to be unsound, though all its other members may be healthy and their powers or functions unimpaired."[1] There can, we think, be little doubt that this is a correct statement for all practical purposes, although many psychologists might differ from this learned Judge in so far as the phenomonology of mind is concerned, and question the statement that "will, perception, thought, and reason, are distinct faculties or functions." But the question of moral insanity is somewhat different. Is the faculty by which we judge of moral obligation, is the moral sense or conscience a distinct faculty or function of mind from reason? Is it not a cognitive faculty, just as the power of judging of quantities or numbers, relations or associations, is cognitive? and if it is intellectual, in that sense, can it be said that there can be a moral insanity which does not affect the intellectual life? If the existence of such an insanity can be proved, ought its proved existence to modify the civil capacity of the individual affected by it, and ought it to limit his responsibility to the criminal law of the land? These questions we propose to consider here.

§ 255. **The Psychology of Eccentricity.**—One thing must be remembered with regard to this subject, and that is, that every man is very like a steam-engine, and that every brain, like a boiler, has just a certain power. If a man over-

[1] Banks *v.* Goodfellow, 5 L. R., Q. B. 549.

works his viscera, he must underwork his brain. If he goes in for physical labor, he must be content to go without ideas. There is a deep physiological truth in the statement that a man "cannot serve God and mammon." So it is in habitual direction. Energy always takes the easy road. The easy road is the one which has [197]been trodden. Habit is the maker of paths. Thus it comes that he who would cultivate one faculty must generally let another lie fallow. Leonardo da Vinci was an uncommon man. Shakespeare might have been Newton or Laplace, but he could not have been Shakespeare too. A man who wishes to be skilful in one thing must neglect others. The whole theory of the process of natural selection is founded on this principle. This is true of any mental direction of energy, of any acquired skill—one faculty suffers because the other is advantaged. This follows from the fact that a man has just so much energy to make use of and no more; that it is, in other words, a constant quantity. Now, where energy is manifested under the influence of disease, where a channel is made by abnormal conditions through which energy flows, this must necessarily alter the relation of other faculties to the supply of energy which they enjoyed in the healthy state. Automatic movements require energy. When Johnson touched all the lamp-posts in Fleet Street, there was no diminution of the amount of his thought, but there was a development of energy too great to be employed in the continuation of certain changing mental states, and which found vent in certain easy muscular motions. So a person who is insane, who may be said to think automatically, may have too great a flow of energy to be employed in healthy mental exercise, and it therefore manifests itself in eccentricity of conduct and speech. But when the flow through those new channels has become continuous, when habits of energy have been confirmed, these very acts become powers in the life of the individual—they not only take surplus energy, but they demand energy where there is no overflow. To trace this distinction between eccentricity and insanity, suppose that the above explanation of Dr. Johnson's habit to be correct, then, whenever from length of custom this habit of touching the lamp-posts in Fleet Street began to demand energy—whenever this waste-pipe for overflow became a

"main" for consumption—eccentricity had become insanity. Thus, suppose Johnson had little enough energy to continue any series of mental states; suppose that strong emotion demanded, and was capable of using, all the energy which could be developed at the time, in the sane man, this automatic act ceases. In the insane man there is a demand for energy by this channel, and in spite of the emotion this incongruous act is indulged in. In this way it will be seen that any abnormal demand for energy must influence other [198]faculties, which would otherwise have had their supply, just as any supply of energy to a skilful part of the organism for the time deprives other parts of the energy necessary to their functions. Thus it will be seen that no disease, however partial in its manifestation, say, for instance, the case quoted from Trousseau, of the gentleman who had an irresistible desire to shout, could exist in the human mind without modifying the direction of energy in some degree. This is actually true, but it is equally true that if an aerolite falls to earth, the earth has actually moved out of its orbit to meet it. The one is, in most cases of medical psychology, as worthy of consideration as the other is in questions of astronomy. And the fact, for all the purposes of law, might be that one faculty only was affected, and that the others could perform their functions exactly as they did when the mind was healthy. The legal maxim that the law does not trouble itself about trifles, might be applied to some arguments which medical psychologists have advanced in all seriousness. The doctrine of the law with regard to monomania has been fully explained, and it seems to us that the doctrine of the law with regard to partial moral mania ought to be exactly similar. There are slight differences, but these are easily explained. Thus, if a man takes property, believing it to be his own, we have seen that he will not be held guilty of theft. If, then, this theft had sprung from any disorder of the emotional part of a man's character, instead of being due to a delusion; if it had arisen from an absolute inability to be influenced by ordinary motives, and if this is satisfactorily proved, then it seems to us to be upon a footing with the case just put, and their responsibility seems to us to be the same in the one case as in the other. This doctrine will hold true with regard to all

criminal acts. Whether the crime be larceny or homicide, it may equally arise from morbid disease. And yet great caution is to be exercised, for the existence of insanity does not preclude the contemporaneous existence of crime. And a person who has delusions with regard to property may have a criminal intention with regard to the life of another; and if he executed that intention, he ought to suffer punishment, notwithstanding the existence of kleptomania. Again, on the other hand, care is to be taken, in deciding such a case, to ascertain whether the partial insanity has not passed into general emotional insanity, in which case the individual might not be in a position to be influenced by any ordinary [199] motives which the law could supply, and he ought, therefore, to be held irresponsible for the criminal outrage.

§ 256. **The Legal Decisions in relation to Moral Insanity.**—Although we cannot but regard the principles stated above as those which do truly apply to the question of moral insanity, there has seemingly been much misunderstanding in relation to the subject; and the various decisions in cases in which the question has been raised have seemed to be to the effect that the law does not recognize such a disease as moral insanity; or, in other words, that even supposing such a disease is proved to exist, it is not of such a nature as to relieve the person who labors under it of responsibility for criminal acts. To understand this subject, one must remember what was said with reference to the nature of volition and the irresistibleness of certain impulses. And in this relation, it has been laid down that a mere uncontrollable impulse of the mind coëxisting with the full possession of the reasoning powers will not warrant an acquittal on the ground of insanity, the question for the jury being whether the prisoner, at the time he committed the act, knew the character and nature of the act, and that it was a wrongful one.[1] We cannot but think that this dictum was given under a misapprehension. We have pointed out that the test of the knowledge of right and wrong must be read in relation to volition, and that if such irresistible impulse could be proved, it would

[1] Reg. v. Barton, 3 Cox C. C. 275, per Parke, B.

negative the knowledge of right and wrong at the time the act was committed. It cannot be said that a man who is thrown out of a window and falls on another and kills him knows he is doing wrong; and so the man who is irresistibly impelled to a certain act, cannot be said to have moral knowledge of its wrongfulness at the time it is done. The real difficulty is one of evidence. "Moral insanity," says Mr. Fitzjames Stephen in his work on the Criminal Law of England,[1] "is said by those who use the phrase, to consist in a specific inability to understand or act upon the distinction between right and wrong—a sort of moral color blindness, by which persons sane in all other respects are prevented from acting with reference to established moral distinctions. Whether such a disease exists, and whether particular people are affected by it, are questions of fact like any others. No doubt, if its existence in a particular case were proved, it would be a ground for acquitting the prisoner, as it would disprove malice. So it might be a good defence to admit that a man meant to murder another, that he had a loaded pistol to shoot him, and pointed it at his head, but to contend that it was fired by a sudden, involuntary convulsion of the necessary muscles, and not by the prisoner's will. The difficulty is to get the jury to believe it. The evidence given in support of the assertion that a man is morally insane is generally at least as consistent with the theory that he was a great fool and a great rogue as with the theory that he was the subject of a special disease, the existence of which is doubtful." Although we agree with the general principles laid down, we must take exception to Mr. Fitzjames Stephen's illustration. We think that the involuntary convulsion of the muscles in the case supposed would not be a ground for acquitting the prisoner, any more than the fact that a crime is done involuntarily during a fit of intoxication excuses the drunkard. If a man voluntarily places himself in such a position that he may involuntarily do a serious mischief, he must be regarded as responsible for that mischief. But apart from his illustration, we agree with what is said by Mr. Stephen, and find the real difficulty in all such cases to be

[1] P. 95.

one of evidence. It has been similarly stated by a writer on the Criminal Law of Scotland,[1] where the plea of impulse has been admitted,[2] that although it is most difficult to prove, it is an effectual exculpation if proved. But the want of comprehension upon this point of moral insanity both in this and the sister country is very curious—not that injustice has been done, for we cannot find, on an examination of the cases, that any evil has resulted from the confusion which has existed, but that there have been utterances from the Bench which seem, at first sight, to be at variance with ordinary experience and medical and psychological knowledge. These discrepancies can, it seems to us, be explained away, but it is better when the necessity for such explanation does not arise. In one case, we find a distinguished Scotch Judge saying: "The law does not countenance for a moment the notion of moral insanity; that is to say, what is called irresistible impulse, by which a man is driven into crime, while it is not proved that his reason is destroyed. That perversion of the moral feeling is not insanity, nor is its existence sufficient to make out such a plea."[3] And he added: "The panel must be shown to be unable, by the visitation of God, to do what his duty requires—to struggle and overcome his passions, which every man possessed of reason may." Here, then, we find the denial of impulse as a ground for exculpation. We find a tacit admission of the doctrine that if a man is by disease deprived of the power of struggling and overcoming his passions, he is to be excused. Now, that is the effect of what we call moral insanity: in relation to some particular passion or propensity, the individual has lost the power of control, and if that fact is proved, then for all crimes committed in relation to that passion or propensity, he is to be regarded as irresponsible, and that upon the very principles which were enunciated by the Judge from whom we have quoted in the same charge. In another case, we find the Lord Justice Clerk remarking: "The gambler who destroys himself because ruin is staring him in the face is a

[1] Macdonald's Criminal Law of Scotland, p. 15.

[2] Hume, 41, 4 C, and case of Coalston there; Anne Sparrow (Glasgow) 21st Sept., 1829, Bell's notes, 6.

[3] Smith & Campbell Case, 2 Irvine, 1.

responsible agent, and violates the laws of God. It is not insanity that is the cause of his crime: it is the distempered and disordered workings of a depraved nature within him. You must not consider that insanity is proved by the wicked or the irrational or the irreligious character of the act done: that is not the true view of human nature—it is not the view our religion gives us of it. There are many cases arising from moral depravity and moral wickedness which pass in ordinary language of life as acts of insanity, which are nevertheless acts of a mind rebelling against the decrees of God, impatient of the condition in which the individual is placed, and desirous rather of rushing into the presence of God than of submitting to his decrees. The question for your consideration is whether the party had any notion that the act was one of which the law would take cognizance, for that is the only test which a jury is at liberty to take."[1] And with every word of what is above quoted we can cordially agree. The cases which have been decided in England are equally decisive as to moral insanity, or irresistible impulse. In one it was decided that the circumstance of a person having acted under an irresistible impulse to the commission of homicide is no defence if, at the time he committed the act, he knew he was doing what was wrong;[2] and this knowledge must be understood to include the power of will to enable him to refrain from doing it. In another case, a similar rule was laid down in the following words: "A mere uncontrollable impulse of the mind coëxisting with the full possession of the reasoning powers will not warrant an acquittal on the ground of insanity, the question for the jury being whether the prisoner, at the time he committed the act, knew the character and nature of the act, and that it was a wrongful one.[3] But where a person is in a state of mind in which he is liable to fits of madness, it is for the jury to consider whether the act was done during such a fit, though there is nothing before or after the act to indicate it, and though there is some evidence of design and malice.[4] This decision would allow of an acquit-

[1] Yates' Case, Arkley's Rep. 338, at 341.
[2] Reg. *v.* Haynes, 1 Foster & F. 660.
[3] Reg. *v.* Barton, 3 Cox C. C. 275; and see Reg. *v.* Richards, 1 Foster & F. 87.
[4] Reg. *v.* Richards, 1 Foster & F. 87.

tal on the ground of irresistible impulse, if adequate proof were forthcoming. There is moral turpitude, and that ought to be punished. It is by means of punishment that the moral turpitude of the many has become the morality of the majority; but there is also, it seems to us, a moral obliquity which is due to disease, and it is only by the recognition of both of these that we can really arrive at the truth of this matter, or really do practical justice.

§ 257. **Some Recent Cases.**—One or two recent cases may be alluded to in this connection. In Reg. *v.* Townley,[1] which was tried before Martin, B., in 1866, the defence of insanity was set up. It was proved that the prisoner had stated to several persons that he did not think he had committed any crime, that the girl to whom he was engaged was his property, and that upon it appearing that she meant to throw him over for another, he had a right to kill her. It does not appear whether this was an insane belief or not. Many persons have mistaken notions as to their rights. A man who has been insulted may think he has a right to the life of the person who has trodden upon his intellectual corns, and therefore challenges him. But such a mistake is not a delusion. "If," said the learned Judge who tried the case, "his (the prisoner's) real motive was that he conceived himself to have been ill used, and either from jealousy of the man who was preferred to him, or from a desire of revenge upon him, committed the act, that would be murder. These were the very passions which the law required men to control; and if the deed was done under the influence of these passions, there was no doubt that it was murder." The jury found the prisoner guilty. He was sentenced to penal servitude for life, and sometime after his trial, he committed suicide by throwing himself over a balustrade. We cannot think with those who asserted his insanity that the mode of his death adds much to the strength of the presumption of his moral insanity, and we cannot think with those who maintain that the Judge's charge was inaccurate or unfair. Every word quoted is correct, but although agreeing as we do with the

[1] 3 Foster & F. 839.

scope of his charge, agreeing with the verdict, and regarding the result arrived at by the jury as the right one under the circumstances, we should have desired his Lordship also to state that if the jury were convinced, beyond all doubt, that the prisoner was not, at the time he committed the act, able to control his passions through an absence of will, and if that inability to control his passions was the result of disease, then the crime was not murder. The verdict would have been the same had that question been put to the jury, but the advantage of having a clear and full explication of the principles of the law, which are, as we have seen, somewhat darkly contained in the test of responsibility, would have been very great. In the Chelsea murder, moral insanity was again set up unsuccessfully for the defence. From an examination of all the circumstances, we think the jury were right in rejecting the plea. The accused, the Rev. J. Selby Watson, a clergyman, was seventy years of age, a man of undoubted acquirement, of extensive and accurate knowledge, and he was tried for the murder of his wife. It appeared that his wife had been provoking during her lifetime, and that the accused had suffered much and deeply from her petulance and violence. The defence set up the theory that these circumstances had produced moral insanity, and that by reason of such insanity the accused was irresponsible for the act. Byles, J., said that the real and only question was whether the prisoner, at the time he committed the act, was legally responsible for it, and whether he was a responsible agent? That depended upon a question on which the counsel also agreed: "Did he, at the time he committed the act, know what he was doing? If not, of course he was not criminally responsible. Did he also know that what he was doing was wrong? He was perfectly aware that doubts on the universal applicability of this rule had been expressed by many eminent persons for whose opinions he had the greatest respect. But if it was to be altered at all, it must be altered by act of Parliament."[1] The jury found the prisoner guilty, and he was sentenced to death. On account partly of his age, it is believed, this sentence was commuted to penal servitude for

[1] See "Times," 13th January, 1872.

life. Another sensational case came before the Courts at almost the same time. Christina Edmunds was tried at the Central Criminal Court before Martin, B., in January, 1872.[1] She was a woman of forty-three years of age, had moved in a respectable sphere of society, and was charged with the murder of a boy at Brighton, on the 12th of June, 1871. The deceased ate some chocolate creams, purchased at a confectioner's shop, and died a short time after eating them, with symptoms of poisoning with strychnia. Upon examination, strychnia was found in the stomach. It was proved that the prisoner had, by means of a little boy, procured chocolate creams from the shop of the confectioner Maynard, had deliberately poisoned them with strychnia, which it was proved she had procured, and had returned them to the shop upon some pretext, and it was in consequence of eating some of these sweets that the deceased died. It also appeared that she had herself, on various occasions, left poisoned sweets about in shops, and it was impossible to discover how many persons had suffered in consequence of her cold-blooded and reckless acts. It did appear in evidence, however, that she had attempted to poison the wife of a medical man (Dr. Beard) sometime before, and that she had imputed the illness of Mrs. Beard to the carelessness of the confectioner. The guilt was brought home to her, and it was shown that she had exhibited a great deal of cunning in connection with the crime. She had procured a large quantity of strychnia upon four different occasions, under false pretences, and had borrowed the poison book of a druggist and torn out the leaves to conceal the fact that she had purchased the poison. The defence was insanity, but there was no indication of intellectual insanity about her. She had shown great skill in carrying out her abominable plan, and in using the most clever means to escape detection and to throw the suspicion upon another person. The medical men thought her moral sense deficient, but the weight of their evidence went to the fact that many of her relations had been insane, and not to the issue of her responsibility or irresponsibility. The Judge said: "A poor person was seldom inflicted with insanity, and

[1] See "Times" of 17th January, 1872.

it was common to raise a defence of that kind when people of means were charged with the commission of crime. He had heard a doctor say that all mankind were mad more or less, but that had little to do with the case under consideration. The state of mind which excused crime was well fixed in our law. There were many diseases to which the mind was liable as well as the body. There was the idiot who was born without any mind whatever. Again, there was the man who was raging mad, and if he had what was called a homicidal tendency, he would have no more criminal responsibility than a tiger." And he further said to the jury: "If the jury in this case should think that the prisoner did not know right from wrong, at the time she committed the crime with which she is charged, if she did commit it, they must acquit her." The jury found her guilty. Some doubt, however, seems to have existed in the learned Judge's mind—raised doubtless by the evidence of the strong taint of insanity in the prisoner's family—for it appeared that her father died in a lunatic asylum, having suffered for many years from homicidal and suicidal mania, her brother died at Earlswood Asylum, an epileptic idiot, her grandfather had also suffered from cerebral disease, while her sister also suffers from the effect of this terrible psychosis; and Sir William Gull and Dr. Orange were sent by the Home Secretary to examine the patient, and as they came to the conclusion that she was insane, her sentence was commuted, and she was confined in the Asylum for Criminal Lunatics at Broadmoor. The proceedings which took place subsequent to the trial in this case would seem to throw some doubt on the correctness of the verdict; but looking at the verdict only in relation to the evidence adduced, we cannot see that it was not a proper conclusion to come to, and we cannot agree with the writer in the Lancet—possibly one of the medical witnesses examined on behalf of the prisoner—that "if there is one thing certainly proved in mental medicine, it is this, that for any woman belonging to a family which (like that of the Edmund's) was a prey to insanity and other nervous diseases, and living an involuntary single life, while struggling with hysteria and suppressed sexual feelings, it would be almost impossible to go on to the critical age of forty-three without actual derangement. That

her crime had a motive, and that her conduct was directed with an infernal cunning towards her end, is not in the least inconsistent with the worst forms of madness. We do not hesitate to say that had Christina Edmunds been hanged, a judicial murder would have been committed." We cannot agree with this writer in any of his three statements, and although we must regard the opinions of Sir William Gull and Dr. Orange as satisfactory, as we do not know upon what facts they were founded, and as the Home Secretary saw fit to act upon them, we should have regarded the verdict, but for these opinions, as eminently satisfactory, and the case as one in which the existence of exculpating moral insanity had not been proved.[1]

§ 258. **American Law with regard to this Subject.**—A distinction has been introduced by some writers upon mental unsoundness between moral insanity and irresistible impulse. To us, as we have seen, there seems to be no real distinction between these two. Wherever it has been urged that there is a disease of a moral sense, as there may be a disease of the finger, affecting the moral relations of the individual at the same time that the intellectual existence is unimpaired, the Courts have negatived it. But that there may be such a weakening of the will either through long-continued habit or by disease as to take certain acts out of the range of volition and place them in the category of automatic actions, cannot be doubted, and that acts arising in consequence of such an abrogation or overthrow of volition will be regarded as irresponsible, is beyond doubt. The Courts in the United States have persistently discountenanced the notion of a moral insanity as coëxistent with mental sanity and as distinguished from an absence of voluntary power.[2] But they have at the same time repeatedly admitted that an involuntary impulse,

[1] See the case of State *v.* Fore, given in Wharton on Insanity, § 179.

[2] Com. *v.* Rogers, 7 Metc. 500; Report by Biglow & Bemis, p. ; Com. *v.* Heath, 11 Gray, 303; State *v.* Lawrence, 57 Me. 574; Freeman *v.* People, 4 Denio, 79; State *v.* Brandon, 8 Jones, 463; People *v.* Coffman, 24 Cal. 230; Farrer *v.* State, per Thurman, J., 2 Ohio St. R. 54; State *v.* Gardiner, Wright's Ohio Rep. 392; Vance *v.* Commonwealth, 2 Va. Cas. 132; State *v.* Windsor, 5 Harr. (Del.) 512; State *v.* Spencer, 1 Zabriskie, 196. See U. S. *v.* Holmes, 1 Clifford, 98. But see St. Louis Mutual Ins. Co. *v.* Graves, 6 Bush, (Ky.) 290.

if proved, would be a good ground for acquitting a person accused of crime. Such irresistible impulse is not simply what has been called ungovernable temper: it is not the passion of a sane man, for the temper of a man with reason can be governed, and the passions of a sane man can be restrained; and it is to compel such governance, and to necessitate such restraint, that laws have been enacted and that punishments are enforced. Mr. Fitzjames Stephen has stated the true doctrine with regard to impulse in the work that has already been referred to,[1] and as his statement is in accordance with the law as laid down in America, we give his words in this place: "It would be absurd to deny the possibility that such [irresistible] impulses may occur, or the fact that they have occurred and been acted on. Instances are also given in which the impulse was felt and resisted. The only question which the existence of such impulses can raise in the administration of criminal justice is whether the particular impulse was irresistible as well as unresisted. If it were irresistible, the person accused is entitled to be acquitted, because the act was not voluntary, and was not properly his act. If the impulse was resistible, the fact that it proceeded from disease is no excuse at all." This question was considered in the case of The Commonwealth *v.* Rogers, where the presiding Judge said: "In order to constitute a crime, a man must have intelligence and capacity enough to have a criminal intent and purpose; and if his reason and mental powers are either so deficient that he has no will, no conscience or controlling mental power, or if, through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for criminal acts." And later in the same charge, in speaking of delusion as an excuse for crime, he said: "This may operate as an excuse for a criminal act in one of two modes—either the delusion is such that the person under its influence has a real and firm belief of some fact not true in itself, but which, if it were true, would excuse the act; or, 2d, This state of delusion indicates to an experienced person that the mind is in a dis-

[1] Criminal Law of England, p. 91.

eased state; that the known tendency of that diseased state of mind is to break out into sudden paroxysms of violence, venting itself in acts of homicide or other violent acts towards friend or foe indiscriminately, so that although there were no previous indications of violence, yet the subsequent act, connecting itself with the previous symptoms and indications, will enable an experienced person to say that the outbreak was of such a character that for the time being it must have overborne memory and reason; the act was the result of the disease and not of a mind capable of choosing; in short, that it was the result of uncontrollable impulse and not of a person acted upon by motives and governed by the will.[1] A similar doctrine has since that time been laid down in various cases.[2] Thus, in one, a Judge said: "Moral insanity arises from the existence of some of the natural propensities in such violence that it is impossible not to yield to them. It bears a striking resemblance to vice, which is said to consist in an undue excitement of the passions and will, and in their irregular or crooked actions leading to crime. It is therefore to be received with the utmost scrutiny. It is not generally admitted in legal tribunals as a species of insanity which relieves from responsibility or crime, and it ought never to be admitted as a defence until it is shown that these propensities exist in such violence as to subjugate the intellect, control the will, and render it impossible for the party to do otherwise than yield. Where its existence is fully established, this species of insanity relieves from accountability to human laws. But this state of mind is not to be presumed without evidence, nor does it usually occur without some premonitory symptoms indicating its approach."[3] In The People *v.* Macfarland,[4] it was said that "it must be borne in mind that the moral as well as the intellectual faculties may be so disordered by disease as to deprive the mind of the controlling and directing power." And in another place: "If the jury believe, from the evidence, that while the prisoner was in

[1] Report by Biglow & Bemis, pp. 267, 268, and 269.

[2] Fisher *v.* People, 23 Ill. 383; Hopps *v.* People, 31 Ill. 385; Com. *v.* Haskell, 2 Brews. 491; State *v.* Felter, 25 Iowa, 67; Stevens *v.* State, 31 Ind. 485; Com. *v.* Mosler, 4 Barr, 266.

[3] Lewis' Cr. Law, 404. See also Fruth's Case, 15 American Jour. of Insanity, 303.

[4] See Charge printed at New York, 1871.

such a paroxysm as is described in the last proposition, [violent frenzies and paroxysms of rage, in which he had not the power of distinguishing whether he was committing a crime or not,] he committed the act charged upon him, at the time thereof being entirely divested of mental control over his actions, and without will or conscience, or the capacity to exercise will or conscience in reference to his conduct, so far as the deceased was concerned and as against the deceased, he is not responsible legally for the act, even though he was at the time capable of distinguishing right from wrong in reference to his act." And further, "to constitute a crime, the accused must be acted upon by motives and governed by will." Mr. Dudley Field, in a very interesting paper on "Emotional Insanity," which is the same thing as moral insanity as that phrase is here understood, has, after a somewhat hostile criticism of many of the rulings and of some of the definitions of responsibility laid down in text-books, come to conclusions which, so far as we can see, in no way differ from the law as it is at present understood. These conclusions are: "1. Children under the age of discretion, idiots, and imbeciles, are not within the discipline of the criminal law. 2. The mental unsoundness of other persons, commonly designated as insanity or mania is in itself, or is attended by disease of the brain; so that no heat of mere passion, and no degree of mere frenzy, can, in any just sense, be pronounced insanity. 3. That neither perceptional insanity [illusions or hallucinations] nor emotional insanity by itself, nor both together, can be accepted as excuse for criminal responsibility. 4. That intellectual or volitional insanity absolves from criminal responsibility when, and only when, the reason has lost the power of choice or the power of controlling the will." Now, these conclusions in no way advance the law of moral insanity beyond the point it had reached in judicial decisions. That some reiteration of the principles of the law was rendered necessary in America by the miscarriages of justice which took place in several notorious cases is perhaps true; but the admission that Mr. Dudley Field, while ably stating the law, has not given any new principle for its guidance, is only justice. After what has been said, no doubt can, it seems to us, be felt in reference to the law of moral or emo-

tional insanity. That it does occur is a fact beyond dispute. That in every case in which it is set up as a defence it should be proved in such a way that the jury cannot doubt that, in relation to the act in question, the prisoner was not sane, and had not the power of choosing or refraining, or, in other and clearer words, that even while he did it, it was not his act, we have seen ought to be imperative, and that such proof will very seldom be forthcoming, as the disease is in itself very rare, we must believe.

§ 259. **Civil Capacity of the Morally or Emotionally Insane.**—[109] With regard to the civil ability of men laboring under any form of partial moral insanity, we would, as in the case of monomania, assert that they should be allowed to exercise all their civil privileges which they are not clearly incapable of exercising without hurt to themselves or others; and they ought, at the same time, to be deprived of the exercise of every civil right which they are incapable of performing without injuring the interests of others, or doing harm to themselves. Thus, it would have been ridiculous to deprive the gentleman we have mentioned, who was in the habit of stealing towels, of his right to exercise the franchise, to represent his county in Parliament, or to manage his own estate. On the other hand, any one who, like the woman mentioned in an earlier part of this work, had an irresistible desire to throw her children in the fire, would be ineligible for the place of a nurse, and no contract entered into with her for such services would be binding upon the contractor. Still she ought—under due precautions—to be allowed to perform other duties of which she was clearly deemed capable. And, as boys get certificates from their school or other masters to say of what they are capable, so might those persons have certificates from reliable medical gentlemen with reference to their capability of certain works, and their faithful performance of certain duties. Of course a person who is morally insane is liable for any damage done to the persons or property of others. Thus, a kleptomaniac would be liable for the price of anything he stole if the article could not be restored to its rightful owner, and even if it were restored, he ought to be held liable for all the expenses incurred in its

recovery, and for any actual loss caused by its absence. Wherever the insane acts are of such a nature as to deprive others of their peace and happiness, to which they have a right in virtue of their membership of a social body, then restraint, and, if necessary, confinement in a lunatic asylum ought to be resorted to. On the other hand, we need hardly, after what we have already advanced on this subject, say that punishment for crimes which directly result from the morbid condition is useless and unjust. There are cases of moral insanity, however, in which the fear of punishment will restrain from the commission of crime. But where it will it generally has, and therefore we find the insane tendency manifested [200] with regard to the appropriation of useless and valueless articles, the theft of which would scarcely constitute the crime of larceny. In all cases, therefore, the tests which have been already suggested are applicable to cases of moral mania. The test so frequently laid down with regard to the moral conceptions of the individual has as often been shown to be of little use. Many of the morally insane are capable of understanding the difference between right and wrong, but there is much difference between understanding the simple meaning of a proposition as stated, and the existence of that proposition as a rule of life. Words are all very well, but they are often apart from a life. A man may be able to understand a command in one sense and not in another. He may be unable to make a rule applicable to his own conduct. Thus, the Bosges man, who thought it was right in him to steal the wives of other men, and wrong in others to steal his own wife, had not sufficient intelligence to comprehend any real distinction. Now, many persons are in a similar position with regard to moral facts, sometimes, as in the case of the moral idiot, from want of mental power to enable them to understand these relations, and sometimes, as in moral mania, from an entire distortion of the faculties which appreciate moral distinctions—a distortion brought about not by positive defect existing in early life, but which is due to the incursion of organic disease. In all these cases, then, where, through any of these defects or aberrations, the individual is made incapable either of understanding the right and wrong, the commanded and forbidden, the rewarded or punished, or

where, understanding these as abstract propositions, he is unable to make them influence his life, the individual should be held irresponsible in relation to any acts which may be within the influence of these morbid impressions. But where the individual is able to understand, and capable of applying, these principles to his conduct for a guide, and yet does not do so, there we have moral turpitude, and not moral imbecility or mania. In such a case the individual is a criminal and ought to be punished. In this place, then, we need not dwell upon the questions of testamentary capacity or the power of entering into contracts. The principles of the law in relation to these matters have already been fully discussed, and the application of them to the facts must now, after such various and miscellaneous illustration, be easy. One of the moral monomanias considered in the preceding chapter claims some attention in this place. Suicide may, as we have seen, be the act of a sane or of an insane man. We must therefore consider—

§ 260. **Suicide in relation to Insurance.**—Suicide in a fit of temporary insanity does not avoid a policy which does not contain an express provision that death by such means shall avoid it.[1] "It appears to me clear," said Lord Hatherly, (then Vice-Chancellor Wood), "that where there is no express provision in the policy, that in the event of the insured dying by his own hand the policy shall become void, that the policy is not vacated by the circumstance of his having died by his own hand while in a state of temporary insanity. It was held by the House of Lords in Fauntleroy's case[2] that it would be contrary to public policy to insure a man a benefit upon his dying by the hands of public justice; and as it would be contrary to the policy of the law for any such express contract to be made, so no such contract could be implied in the policy to pay the amount in such an event, and accordingly, although nothing was said in the policy one way or the other, the law would infer as a condition that the execution of the insured, in consequence of a crime com-

[1] How *v.* The Anglo-Australian, etc., Life Ass. Co. 7 Jur. N. S. 673.

[2] The Amicable Insurance Soc. *v.* Rolland, 2 Dow. & C. 1; 4 Bligh N. S. 194. See also Moore *v.* Woolsey, 4 Ellis & B. 243.

mitted by him, was not one of the cases in respect of which the policy would become payable. So the argument might be pursued, although I do not know that any case has been so decided, to the same extent, in the case of a person committing suicide while in a sane state of mind, thus committing a felony and losing his life thereby; but I know of no rule of law that can justify me in extending that to the case of a person committing suicide while in a state of insanity, and therefore committing no legal offence."[1]

§ 261. **Suicide in relation to Insurance.**—The law upon this point seems to be firmly established. An insurance company is not liable on a policy if the person insured voluntarily deprives himself of life, and it seems to have been held over and over again in this connection that voluntary suicide can be committed by a person who is insane,[2] and that the mere act of suicide itself gives no indication of the mental condition of the person who kills himself. The real question to be decided in all these cases is whether the insanity was of such a nature as to deprive the individual of all volition, or that "the act of self-destruction was not the result of the will and intention of the party adapting the means to the end, and contemplating the physical nature and effects of the act."[3] This has indeed been the question which almost in every case has been left to the jury. Thus, in one case, they were asked to say whether it was an act voluntarily done,[4] in another, to decide whether the condition of the deceased at the time of his death was such that he could not distinguish between right and wrong, or such that he did not know he was doing an act which would produce death.[5] In Isett *v.* The American Insurance Company,[6] the

[1] See also Hartman *v.* Keystone Ins. Co. 21 Pa. St. 466; Dormay *v.* Borradaile, 10 Beav. 335.

[2] Borradaile *v.* Hunter, 5 Man. & G. 639; Cleft *v.* Schwabe, 3 C. B. 437; Dufaur *v.* Professional Ins. Co. 25 Beav. 602. See also Dean *v.* American M. L. Ins. Co. 4 Allen, (Mass.) 96; Eastabrook *v.* Union Mutual Life Ins. Co. 54 Me. 224; Nuniek *v.* Mut. Benefit Life Ins. Co. 3 Brews. 502; St. Louis Mut. Ins. Co. *v.* Graves, 6 Bush, (Ky.) 290; Cooper *v.* Mass. Mut. Ins. Co. 102 Mass, 227.

[3] Cooper *v.* Massachusetts Mut. Life Ins. Co. 102 Mas. 227.

[4] Fowler *v.* Mut. Life Ins. Co. 4 Lansing, (N. Y.) 202.

[5] Mallory *v.* Travellers' Ins. Co. N. Y. Sup. Ct. 1870. See also Van Zandt *v.* Mut. Benefit Life Ins. Co., May's Law of Ins. p. 371.

[6] 1 Ins. L. J. 715.

jury were instructed that if the insured at the time of his death was conscious that his death would result from the discharge of the pistol in his hands, though he was laboring under mental depression or disturbance of mind, or if he destroyed his life because he was suffering from some physical infirmity, and for the purpose of escaping from such infirmity, his death was such as would relieve the company from the necessity of paying the policy to his representatives.[1] In another case, Mr. Justice Miller said: "It is not every kind or degree of insanity which will so far excuse the party taking his own life as to make the company insuring liable. To do this, the act of self-destruction must have beeen the consequence of insanity, and the mind of the deceased must have been so deranged as to have made him incapable of using a rational judgment in regard to the act he was committing. If he was impelled to the act by an insane impulse, which the reason which was left to him did not enable him to resist, or if his reasoning powers were so overthrown by his mental condition thet he could not exercise his reasoning faculties on the act he was about to do, then the company was liable. On the other hand, there is no presumption of law, *prima facie* or otherwise, that self-destruction arises from insanity; and if you believe, from the evidence, that the deceased, although excited or angry or distressed in mind, formed the determination to take his own life, because in the exercise of his usual reasoning faculties he preferred death to life, then the company is not liable, because he died by his own hand within the meaning of the policy."[2] And the doctrine there laid down was affirmed on appeal to the Supreme Court of the United States.[3] But in all these cases the law as laid down in Borradaile *v.* Hunter[4] was followed. The doctrine there enunciated was that it might "well be conceded that the case would not have fallen within the meaning of the condition (death by his own hand) had the death of the assured resulted from an act committed under the influence of delirium, or if he had, in a paroxysm of fever, precipitated

[1] Gay *v.* Union Mut. Life Ins. Co. 9 Blatch C. Ct. (U. S.) 142.
[2] Terry *v.* Life Insurance Co. 1 Dillon C. Ct. (U. S.) 403.
[3] Mut. Ins. Co. *v.* Terry. See Albany Law Journal, 17 May, 1873,
[4] 5 Man. & G. 639.

himself from the window, or having been bled, removed the bandages, and death in either case ensued. In these and many other cases that might be put, though strictly speaking the assured may be said to have died by his own hands, the circumstances clearly would not be such as the parties contemplated when the contract was entered into." And further, the Court was of opinion that all that the "contract requires is that the act of self-destruction should be the voluntary and wilful act of a man having at the time sufficient powers of mind and reason to understand the physical nature and consequences of such act, and having at the time a purpose and intention to cause his own death by that act, and the question whether at the time he was capable of understanding the moral nature and quality of his purpose is not relevant to the inquiry further than as it might help to illustrate the extent of his capacity to understand the physical character of the act itself." And in the other leading case on this subject it was decided that the jury should be satisfied that he died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible agent."[1]

§ 262. **Burden of Proof.**—In the case of Cleft *v.* Schwabe,[2] which has just been cited, it was also held that it lay with the insurance company which disputed the policy to prove that the person in respect of whose death it was claimed died by his own hand, but that when that had been proved, it was to be presumed that he so died by his own voluntary act, and in a sane condition, until that presumption is rebutted by proof.[3]

[1] Cleft *v.* Schwabe. 3 C. B. 437; White *v.* The British Empire Ass. Co. 38 L. J. Ch. 53; Stormont *v.* Waterloo Life Casualty Ass. Co. 1 Foster & F. 22.

[2] 3 C. B. 437.

[3] See chapter on Proof of Insanity, and see May on Insurance, 1873.

CHAPTER XI.

MELANCHOLIA.

§ 263. **Diseases of Exaltation and Depression.**—There are two well marked classes of diseases—those which are marked by the exaltation of the processes of health, and those which are characterized by a depression of these processes. Pleasure has been defined as a reflex of the spontaneous and unimpeded exertion of a power of whose energy we are conscious, and pain as a reflex of the overstrained or repressed exertion of such a power.[1] There is much to be said for this definition, and it is, it seems to us, applicable to cases of mental disease as well as to mental health. To him who thinks, the more rapid succession of thoughts is pleasure; to him who feels, a quick train of emotions is enjoyment; and to him who sees, varying sights are a cause of happiness. On the other hand, if you deprive the man who thinks of thought, if you take away a cause of emotion from the man who feels, or if you shut the eyes of him who simply sees, you produce misery. Now, disease does this for men. In some forms, as we have seen, we have weakness which deprives a man of the power of thinking, feeling, or seeing, and deprives him to that extent of the capacity of pleasure and pain. In other forms, we find all the mental processes quickened. Thus, in mania, the incoherence of the individual is due not to an actual want of association in thought, but a want of adequacy in expression. There is an actual connected train of thoughts running through the head of the individual, but he can only express one here and there, and these seem disconnected or incoherent, just as the tops of hills do when seen above a

[1] See Sir William Hamilton's Lectures, Metaph. II. 440; and see Aristotle's Nicomachean Ethics, Book 10.

mist. Then, again, in other diseases, we have an actual degradation of function in relation to organism. The thoughts come slowly: there is a want of variety: there is a sameness and monotony; and there is misery. This then is, in a mental point of view, the difference between mania and melancholia. The one is a disease of exaltation of function; the other, of depression of function.

§ 264. **Melancholia: Why Distinguished from other Diseases.**—Many writers have thought it unnecessary to distinguish melancholia from monomania. On the ground of many classifications of insanity, this would, as may be well understood, be reasonable enough. Where insanity is distinguished by the function affected by disease and not by the peculiar character of the affection, it is unnecessary to differentiate between mania and melancholia. It is evident that both of these would necessarily fall to some extent under the definitions of emotional insanity and intellectual insanity, for in both the feelings are more or less influenced by the morbid changes in the brain, and in both the intellect is to some extent impaired. Indeed, that is one good ground for holding that this classification is practically of little value. But as we have seen,[1] classifications, like Sunday, were made for men, and not men for classifications; and the practical usefulness of a classification is the true criterion of its excellence. It cannot be doubted by those who have been brought in contact with persons laboring under mental disease that this distinction between states of exaltation and states of depression is of daily value, and hence it is that we have adopted it here.

§ 265. **Kinds of Melancholia.**—Some authors have asserted that melancholia could not properly be called a kind of insanity, but that it was to be regarded as a phase in all kinds of insanity; and although this view seems to be unsatisfactory, there is little doubt that very many of the forms of insanity which are distinguished by psychologists pass through an initiatory stage of melancholia. However, the

[1] Chapter on Mental Unsoundness.

fact that dements are liable to attacks of excitement, does not make us deny the existence of dementia and assert its identity with mania, and the same reasoning holds good in relation to melancholia. We are in the habit of distinguishing simple melancholia from acute melancholia, and dividing the latter into hypochondriacal and religious monomania.

§ 266. **Simple Melancholia.**—Melancholy, depression, sorrow, grief, are not indications of ill health. A mind which, like the face of the hero of Victor Hugo's novel, is always on the grin, has been manipulated by the cruel fingers of disease. A healthy mind is a repertory of tears as well as of smiles. Men in this varigated world must have sorrows as well as joys. There are causes enough of real, true, healthy sadness in this world; and he who cannot feel these, he who cannot mourn and weep when the stern circumstances demand such tribute, is less a man and more a stone than is consistent with perfect mental health. But although this is true, it is also certain that this world is not all of one color. It is not meant wholly for a valley of tears. The brightness of day succeeds the darkness of night; and so even the most poignant grief yields to the cheering influences of a busy world, with its thronging events, which bring other emotions to the sufferer. While grief is new, he who sorrows can see no end to it, but it wears out in a healthy mind, and is replaced by healthy joy again. In the mind diseased, however, the depression does not wear out, but, like a river-course, wears deeper. It is disproportioned to its cause both in intensity and duration. Simple melancholia not unfrequently has its origin in real grief, but the real grief in the unhealthy mind is not erased by the hand of time, and passes into the sorrow of disease. Simple melancholia is characterized by deep depression, by inconsolable sorrow, by weary grief, and yet withal the intellectual powers remain unimpaired. The individual reasons correctly, remembers accurately, but cannot reason him or herself out of the heavy despondency, and cannot remember the innumerable causes for joy that are to be found in the life of each. Still, in this form of the disease, there are no well-marked delusions. It is true, in a sense, that there can be no impairment of mind without the

generation of false beliefs. And even the simple melancholiac generally labors under erroneous impressions with regard to sins committed or deaths caused by misconduct which were really due to natural causes. We have seen a case of simple melancholia in which the individual was constantly impressed with a sense of impending death, and although in one sense this belief might not be called a delusion, in another and truer sense, it really is one. However, it is to be remembered that the prominent features of this disease are not delusions, but an inordinate grief and melancholy which is irremovable by the ordinary benign treatment of the world. We find a woman sorrowing for the death of a father who died twenty years before, full of years. We find a man weighed down, restless, uneasy, and always thinking of the misery of the present, and without hope of a better future. We find another looking forward with bleeching sorrow to the doom that the gloom of after-death may hide; and in all these cases we recognize simple melancholia.

§ 267. **Of the Mental Impairment of Simple Melancholia.**—We have said that mental impairment might easily be overlooked in those who suffer from simple melancholia. As a fact, it has often been overlooked by acute observers, who have asserted that this disease was unattended by any mental symptoms. This is, however, far from true. We have seen that the characteristic of this disease is painful self-absorption, self-tormenting subjectivity. But that is unhealthy. The true man lives an objective existence. We have come to understand that poetry to be good must be objective; that moody speculation as to one's own inner life is apt to pass into sickly metaphysical sentimentality, and that a Shakespeare or a Burns are great in that they live in the world that we live in. But in relation to disease, as we have seen, this is its most striking characteristic. Insane persons substitute their own subjective impressions for objective realities, and we call these delusions, or they suffer emotions of sorrow, or respond to feelings of joy which are dependent upon subjective causes, and are not like healthy feelings associated with objective events. But this is not only indicative of disease, but it is a cause of disease. The world is

motley, and for healthy minds "motley's the only wear." But the melancholic mind wears a Quaker's suit of incessant sadness. There is no healthy variety. The mind is fixed on one idea, and the other parts of the mind atrophy in consequence. So it is with the limbs of the body—they wither if they are not used; and it is true too of the limbs of the mind. And in this way, in all cases of simple melancholia, a certain amount of general weakness will be discovered. If a man is in the habit of remembering only in relation to certain things, his power of reproducing in other directions necessarily becomes impaired. If a man is always thinking of himself, always wrapt up in sorrow, he is unobservant of the world, and it passes him without making any impression, for it is only what has been embalmed in attention that will not turn to ashes in the sepulchre of memory. But it is scarcely necessary to dwell longer on this point: its truth must be evident.

§ 268. **Physical Symptoms of Simple Melancholia.**—Simple melancholia may be associated with many diseases, but there are certain prevailing physical characteristics which may generally be looked for in connection with this disease. We take the following statement of these from Dr. Browne's lecture on simple melancholia:[1] "1. There are frequently painful feelings of a sense of weight, or vacancy, or throbbing, or actual pain in the head. These feelings may occupy the forehead or the coronal region—most frequently the latter—and are usually accompanied by giddiness, especially when any rapid movement is attempted, and by great insomnia. 2. There is frequently impairment of the special senses, which never, however, amount to hallucinations. The eyesight is dim; there are soundings in the ears; a constant bad taste is felt in the mouth; a numbness or hyperæthesia is experienced in the hands and feet, or in some track of skin. 3. There is frequently impairment of general nutrition, with impoverishment of the blood: the body becomes thin and wasted, the skin loses its softness, and is pale or of a dirty color, and the muscles are feeble and relaxed. The

[1] British Medical Journal for 1872, vol. ii., p. 429.

pupils are dilated: the mucous membranes are exsanguine, and all the indications of anæmia are obvious. In extreme cases a degree of leucorythæmia may be present so that the blood under the microscope exhibits a distinct increase in the proportion of white cells. 4. There are frequently disturbances in the circulatory and respiratory systems; the heart's action is irregular or tumultuous; attacks of palpitation come on from time to time, especially at night; there is a soft, blowing, cardiac murmur, loudest at the base and propagated along the great vessels; the pulse is feeble and compressible; the extremities are cold; the breathing is sighing in character. 5. The temperature is below the normal standard: it frequently falls as low as 96.8 deg., and rarely rises to 98.4 deg. 6. The digestive functions are frequently disordered; the tongue is coated with a dirty white fur, or is red and irritable. There is complete anorexia, or a capricious appetite. There is vomiting, pyrosis, painful digestion, or dyspepsia in some form, and the bowels are almost invariably constipated. 7. There is frequently derangement of the menstrual functions, amenorrhœa, menorrhagia, or leucorrhœa."

§ 269. **Importance of the Study of Simple Melancholia.**—It is of considerable importance that medical men should understand the real characteristics of this disease, as questions as to its existence or extent not unfrequently occur in courts of law. Experience has taught us that a large number of the crimes which are committed under the influence of insanity are due to the despair and agony which are symptomatic of simple melancholia; and as the mental impairment is in many cases only to be discovered after careful investigation, the difficulty of deciding the question of responsibility or irresponsibility is often considerable.[1] The difficulty is less when simple melancholia has passed over into the acute form of the disease, for then its presence is made known by the existence of recognizable delusions; but while the disease is characterized only by great uneasiness, vague terror, irrational fear, and dull, shrinking depression, the difficulty is excessive. What we have said will, however, be some

[1] Many of the cases of suicide are to be ascribed to simple melancholia.

guidance, and as in most cases diagnostic rules are best understood in relation to illustration, we quote the description of a case of simple melancholia, which will be found in the first part of Dr. Browne's lecture, from which we have already quoted.

§ 270. **Case of Simple Melancholia.**—"Jane S——," says Dr. Browne, "is a native of Scotland, but has been resident in Yorkshire for five years. Her mother's brother was once insane and an inmate of an asylum, but with that exception, no member of her family has ever suffered from mental or nervous disease. The patient herself has had no serious illness nor cranial injury, and has always been of sober habits. On the first of May last, she gave birth to an illegitimate child. Her fall from virtue had preyed much upon her mind during her pregnancy, and the depression of spirits thus occasioned deepened considerably at the time of her confinement, when she was in poor lodgings and could not command liberal nourishment or careful nursing, and passed into morbid despondency three days after delivery, when the unexpected announcement of her father's death reached her. She at once formed the idea that her father (who was a very aged man, and really died in the course of nature) had been killed by the shame of her misfortune. She sank into a state of inconsolable grief, wept incessantly, was sleepless, and twice attempted to put an end to her existence and sorrow by jumping through the window. After this, she refused all food, complained of insupportable misery and weakness, and repeatedly threatened suicide; so that, for her own protection, she was sent to this asylum. After reading her history, as you recollect, I introduced you to the patient[1]—a thin, pale, care-worn-looking woman, whom you found seated in the day-room, with her head bowed down and her hands crossed upon her lap, in an attitude of listless dejection. Her features were fixed in an expression of mental suffering, the angles of her mouth being drawn down, and the corrugators of the upper eyebrows being firmly contracted. When I spoke to her, she answered slowly and

[1] This was a clinical lecture delivered to a class of students.

with evident reluctance, turning away from me as if shrinking from observation, and seeking solitude. In reply to my repeated questions, however, she told me that she was quite wretched and tired of life, and that she had nothing to look forward to but death. She added that she had killed her father by her conduct, and had no affection for her child, so that she did not care if she never saw it again. Her answers must have satisfied you that she was perfectly intelligent—she at once apprehended the meaning of all that was said to her; that her memory was good—she accurately recalled the facts of her past history, which had been communicated to you; and that no delusion existed in her mind—she repudiated several delusive beliefs which I suggested to her. The nearest approach to a delusional state of mind which she exhibited was in the tendency to exaggerate all the transgressions and peccadillos of her past life and their consequences, which she from time to time displayed. Not only had she killed her father, but she had perhaps shortened her mother's days by her levity as a girl, and brought on the fever which carried off her youngest sister by a beating which she had once given her. She was so miserable, she said, that she had no anxiety about her soul; but she dreamt sometimes that she was in flames of fire, and then started up alarmed. The nurse who was in attendance upon Jane S—— added to her statement, for your information, that she could not be induced to employ herself; that she sometimes refused her food; that she was 'lowest' in the morning, and brightened up as the day advanced; that she had sometimes 'attacks of crying,' and that she slept badly."[1] This is a careful description of a useful typical case of simple melancholia. We pass now to the after form of this disease.

§ 271. **Acute Melancholia.**—To see things in the making has been thought inexpedient for fools, but it is most instructive to the wise, and nothing can better indicate the true nature of acute melancholia than the process of the transformation of simple melancholia into the more serious form of the disease. This process has been well described by one

[1] British Med. Jour., vol. ii., for 1872. pp. 403. 404.

author. "The vague depression," he says, "or fear, which has been held as it were in solution in the mind, gradually crystalizes into certain delusional forms or beliefs. And these delusional forms or beliefs can be classified into certain systems just as crystals can. Minds have their special delusional tendencies just as chemical substances have their special crystaline forms; and of some it might be predicted that on being attacked by melancholia, they will pass into the hypochondriacal variety as certainly as it may be foretold of borax that on crystalizing it will assume the form of an oblique, rhombic prism." In some ways there is a good deal of truth in this comparison, and in the associating healthy thought with colloidal and unhealthy with crystaline formation. However, here we have the distinctive character of acute melancholia. It is always marked by delusive impressions, and these beliefs have a curious fixity and persistence which is not to be met with in relation to any other disease. These delusions generally run with temperament. In one man, you find such good digestion that he never cares about his soul. He is merry: he finds life a stimulant, and death—at least while he lives—has no dominion over him. Another is always probing his soul. One man is religious, the other not. One man has intense feelings in relation to his soul's welfare, and another has equally urgent cares as to his bodily well being. In these men, when melancholia supervenes on health, their delusive beliefs will be only intensifications of the impressions they had, and the thoughts which had them during health. The one man will mourn for his lost soul, will weep and wring his hands, because he has committed horrible crimes; will be bowed down with the feeling that God's hand is made bare to smite him; will be conscious that he has incurred Heaven's heavy wrath. But these feelings will be associated with actual delusions. Thus, we know one case where a woman believed that she had murdered her mother by putting her in the water-butt, while the old woman actually died in her bed, tended with all care and consideration by her who harbored the delusion. The horror of this thought, the intense misery which she felt in relation to God's anger at her crime, her uneradicable despair and hopeless-

ness of salvation at last so wrought her into rash frenzy that she deprived herself of life. But there is an equally well-marked phase of this disease which has been designated hypochondriacal melancholia. In this disease, the patient feels that he is excessively ill. No assurances will convince him that he is not suffering from painful, serious, and fatal disease. He will weep for hours because he cannot enlist the sympathy which his calamity merits, and because no one will believe that he has one foot in the grave. He is convinced in his own mind that he never sleeps at night. He will talk long and lugubriously about himself, and will detail innumerable and incompatible symptoms. Often he will complain of terrible weakness, and insist upon being allowed to remain in bed, on the ground that if he got up he could not stand, and withal he may be strong enough to support his own and another's weight. Although this terrible hypochondriasis is indicative of the disease, the patient is not unfrequently careless of life, and attempts at suicide are to be expected in almost every case of acute melancholia.

§ 272. **Physical Symptoms of Acute Melancholia.**— The physical symptoms of this form of disease are very like those which we have described in relation to simple melancholia. Emaciation and anæmia are almost invariably to be met with. The mucous membranes are generally pale, and the muscles soft and flaccid. The expression of the face is generally typical. There is a drawn, pinched look associated with the lines of grief which would differentiate it from ordinary sorrow. The face is as fixed in one expression as the mind behind it is in one idea. It is not unfrequent to find those persons who are affected by melancholia indulging in continuous rhythmic movements of the body or limbs. Emotion generally frees more energy than can be used in the thoughts associated with the feeling, and that energy flows over into the muscles and produces action. That action will take the road which has been made by voluntary energy, but soon becomes habitual, and the movements become, as it were, a necessary part of the disease. Just as wringing of the hands is associated with ordinary sorrow, so are many

motions, such as rocking backwards and forwards or beating with the hands, associated with the diseased form of grief which we call melancholia.

§ 273. **Melancholia in relation to Criminal Acts.**— From what has been said above, it is not difficult to understand that many acts which are cognizable by the criminal law have their origin in melancholia. Ideas of persecution, which are not unfrequent in any of the cases, are very often associated with diseases which are characterized by depression. The administration of necessary medicines naturally suggests ideas of poisoning. The necessary counsel which a family must take when one of its members becomes diseased, of necessity compels a belief in conspiracy, and our books are full of cases in which crimes have resulted from these diseased impressions. Thus, just before the trial of Rogers in the United States, whose case has been repeatedly mentioned, and whose crime was due to acute melancholia, which subsequently caused his death by suicide, a young man of the name of Gardiner was tried in Baltimore for stabbing a Mr. Wickliffe, the Postmaster-General. The two were going down the Potomac in a steamboat together, and young Gardiner, without any warning or provocation, drew a dagger and stabbed Mr. Wickliffe in the breast. There being a suspicion that Gardiner's mind was affected at the time of the act, a commission of inquiry was held at Baltimore on his conduct, and they pronounced him insane. It seemed that he had been a person of studious habits, and for some time previous to the outbreak, had exhibited symptoms of alienation of mind. His mother had even taken advice on her son's case, but the physician had not treated it as one of positive insanity. The prisoner himself said that at the time of committing the act he believed that Governor Wickliffe was in a conspiracy with others on board to throw him overboard, and that he acted in self-defence. He could give no reason for his imagination, but only supposed that he was to be the victim of a foul conspiracy.[1] From all the circumstances, we are convinced that this was, like many others

[1] See Report of Rogers' Trial, p. 74.

of a similar nature, a crime committed under the influence of delusional melancholia.

§ 274. **Impulse in connection with Melancholia.**—Many cases are on record in which these mental organisms which have been termed impulses have been noted in connection with that abnormal depression which is a symptom of this disease. But although these impulses undoubtedly exist—and it may be noted that such impulses are incident to health, and are consequently more likely to assert themselves in relation to any diseased condition—there is often much reason to question their irresistibility. The fact that they have not been resisted proves nothing as to their uncontrollableness, but the fact that in many cases will has asserted itself and restrained these sudden, morbid tendencies, goes far to indicate that they are for the most part amenable to control. Here is a case given by a recent writer: "It is only a few weeks since that I was asked to see a gentleman of about seventy years of age, whom I found extremely and acutely melancholy. He at once told me that he felt so depressed that he wished to destroy himself, and afterwards told me that upon waking that morning he felt an irresistible impulse urging him to kill his wife. He fortunately told his wife of his intention, and she immediately took steps for the protection of both the patient and herself."[1] Here is a case in which it seems to us the word "irresistible" is used in that loose way which is so apt to introduce confusion into a clear subject. It is evident that in that case the impulse or suggestion had no overwhelming force, and it seems to us most illogical to quote cases in which an impulse has been withstood as illustrations of their irresistibility. It is to be remembered that patients in speaking of these promptings are almost certain to exaggerate their violence. We by no means deny, however, that impulses practically irresistible do occur in relation to melancholia, and cases in which they have led to criminal outrages have more than once come under our notice. It may be said that it is suspicious that the impulse always manifests itself criminally, but the answer

[1] Medicine in relation to Mind, by J. Thompson Dickson. London: 1874.

to this suspicion is that it is not the fact. Many impulses to virtue occur in relation to disease; many tendencies to foolishness and violence short of criminal outrage are found to result from melancholia. Thus, Dr. Dickson mentions the case of a gentleman who was under his care for about two years. "He was suffering from acute melancholia, and very soon after the commencement of the attack, though depressed to the utmost, constantly exhibited outbreaks of violence, the impulse to which he assured me was irresistible. One morning at breakfast he threw his bread at his wife; on another occasion he took up from the table some knives and threw them with violence against the door; on another occasion he broke a looking-glass with his fist; and he committed many similar acts, all of which he detailed to me with sorrow and contrition."[1]

§ 275. **The Legal Relations of Melancholia.**—We have already said that the tests of responsibility which have been laid down by law do not differ in their relation to different diseases, but that they are applicable to all. We do not say that all persons laboring under this form of disease are to be exempted from punishment: we do not argue that the legal test is of such a nature that it will give a means of distinguishing all persons laboring under melancholia from all persons who are of sound mind. That is not the object of the legal tests. Their purpose is to distinguish those who are amenable to the laws of the land from those who are not: to give a means of differentiating those to whom punishment is properly and logically applicable from those to whom it is not. And we do assert that the legal tests explained as we have already interpreted them, and understood in their wide and real sense, will do this in relation to melancholics. In many cases of melancholia, we are convinced that the will is operative, and that consequently the individual is punishable. In others, however, the law as to delusions is applicable; and as that law has been explained elsewhere, nothing further need be said in this place in relation to the responsibility of melancholics in connection with crime.

[1] Op. cit., p. 199.

CHAPTER XII.

DEMENTIA.

§ 276. **Nature of Dementia.**—Dementia is an exaggeration of the enfeeblement of old age—a more ruinous dotage. It [202]is due to exhaustion and torpor of mind. It is attended with general enfeeblement of all the faculties. The mental house is in ruins. It is the return of chaos which education had conquered. Cultivation makes a wilderness a garden, but a time may come when it becomes a wilderness again—

> "Last scene of all,
> That ends this strange, eventful history,
> Is second childishness and mere oblivion:
> Sans teeth, sans eyes, sans taste, sans everything."

That is dementia. When these symptoms come on in the fulness of time, when they are incident to the natural decay of a man whose energies abate, whose senses are blunted, whose emotions are dulled, when it is due to the wearing out of the tissues at the end of life, it is designated senile dementia. But this enfeeblement is not unfrequently an earlier scene in the history of a life. The dénouement is hastened by disease. This general enfeeblement of a man's intellectual and moral nature may be brought on by disease, although it sometimes seems to be little more than the exaggerated decrepitude of extreme old age. Thus, we often find dementia coming on in people who have not nearly reached the limit of man's years, after mania, or after epilepsy. When, however, the disease has established itself, there is no striking difference in the symptoms. A case, described by an accurate observer and an eloquent writer, will enable the reader more graphically to understand the symptoms of this disease.

§ 277. **Case of Dementia Described.**—"Passing to the male wards," says Dr. Crichton Browne in his able clinical lecture on senile dementia,[1] "you encountered Joseph B——, aged seventy-four, pawnbroker, from Leeds, who, on being interrogated, gave the following account of himself: 'I am twenty-two years old, and came here this morning, having walked over from Doncaster. I am a schoolmaster by trade, and have been at all the best colleges in London. This is Monday, and to-morrow will be Friday. I am so poorly that my lips cling together. I have no money, but can get some from my friend, Mr. L——.' After pausing a few moments, I again put the same series of questions to Joseph B——, and elicited the following somewhat inconsistent version: 'I am forty years old, and a married man. My wife and I came here last Sunday from New Wortley. I am in the glove and hosiery trade, and was trained in Leeds. This is Tuesday, and to-morrow will be Wednesday. I never was in better health in all my life. I should have £30 in my pocket, but I can't find it.' Further questions followed, and the result of the examination must have been to satisfy you that Joseph B——'s memory is completely gone, and that his mind is generally much enfeebled. Watching the old man's manner, you might have thought that he was explaining himself with great accuracy. He was neither excited nor depressed. He replied to questions readily and courteously, but his whole discourse was inaccurate and incoherent. His features, much wrinkled, still wore an expression of intelligence. In his eyes the *arcus senilis* was distinctly seen, while on his temples the temporal arteries were observed to stand out prominently and to pursue a very tortuous course. Touched by the fingers, these arteries were felt to be hard and unyielding, as were also the radical arteries of the wrist. The hands of Joseph B—— trembled much, and his gait, when he walked, was tottering, and his whole aspect was that of an infirm, broken-down old man. Referring to the case-book, we found that Joseph B—— having suffered reverses in business, showed signs of mental decay two years ago. His memory gradually failed, he became childish and physically weak, and was ulti-

[1] The British Medical Journal, May 9, 1874.

mately sent to the asylum because he was restless at nights, and was constantly wandering away from home and losing himself. It is reported of him that he is always cheerful and tranquil, but that he is confused in his ideas, and can never tell where he is, nor recall recent experiences. He is constantly mistaking the identity of persons around him, and making ridiculous blunders. He is occasionally sleepless and restless. His appetite is good."

§ 278. **Dementia Distinguished from Idiocy.**—There is not much practical difficulty in distinguishing between this disease and that of imbecility or idiocy.[1] As we have seen, idiocy, and probably imbecility, is congenital, and, to return to our metaphor, these might be compared to a barren land which could not be cultivated, or which, at best, with much labor would yield but a scanty, stunted crop. Idiocy is not a mental loss, because a man cannot be said to lose what he never had: it is a sort of natural destitution of mind. Dementia is the loss of powers which were in possession, and were capable of development. But still the result is very much the same. The later stages of dementia very closely resemble the more marked degrees of idiocy. In the other stages, there is little difficulty in distinguishing between these two forms of mental defect. It is not difficult to distinguish a [203]house which the builders have left before it was completed from one which has been partially pulled down; so it is with these two diseases. In the one it is the poverty of a fortune which was never achieved, in the other it is the poverty of a fortune which has been broken down. Dementia never appears until the age of puberty, and it is progressive in its gradual obliteration of mind, which ends in blank fatuity. The thorough coherence of thought is a condition of strong health. A great man is a man who reasons correctly about great subjects, but a languid incoherence is the characteristic mental condition of persons laboring under dementia. It is such incoherence as is caused by a lack of energy to think: the incoherence of mania is due to the inordinate excitement and energy which is the spring of action.

[1] See M. Ferrus' Leçons Cliniques faites à Bicêtre.

"The defect in naturals," [idiots,] says Locke, "seems to proceed from want of quickness, activity, and motion in the intellectual faculties."[1]

§ 279. **Dementia Distinguished from Mania.**—There is a disorder of idleness, and a disorder traceable to business. It is not one faculty that is decayed—every faculty is enfeebled. It is a state of general effeteness. Memory suffers, the past is forgotten, and what is remembered by the dement resembles what a sane man remembers of his dreams. Those parts of the past which live in him are those which are most remote from the present. The circumstances which occurred previous to the inception of the disease are remembered long after recent events have passed out of the keeping of memory. Attention, which we have somewhere called the focusing of that camera, mind, is impossible to the dement. Dementia is the inertia of rest, mania the inertia of motion. "No flood of ideas overwhelms him [the dement,] says Dr. Crichton Browne: "on the contrary, a mere driblet of thought trickles through him." When the power of concentrating consciousness is lost, all possibility of mental improvement is gone, and where there is no possibility of improvement there is almost a certainty of deterioration. As a reason for all this, there are pathological changes going on in the brain, and a post-mortem examination will frequently disclose lesion of structure, and diminutions of size, which will have a closer relation to the stage of the disease at which death took place. Nothing is more curious than the gradual enfeeblement and impairment of many of the bodily functions in consequence of the disease which exists in the brain or nervous centres. It is certain that it is the mind that keeps the body alive as well as makes the body rich. This may truly be, because it is use that keeps the functions in [204]repair, as it is use keeps a lock from rusting; but as it is the mind that dictates the use, our assertion is none the less true.

§ 280. **Dementia as Distinguished from the Infirmity of Age.**—One circumstance must be remembered, and that

[1] Essay on the Understanding, b. ii., c 12, § 13.

is, that dementia is not simply an enfeeblement exactly similar to the mental infirmity of extreme old age. Even in old age there are pathological changes going on which account for the mental symptoms of old age's drivelling, but that these pathological changes are not the same as those which exist in cases of dementia is certain. Death is a natural thing at a certain age. A man is wound up to go for a certain time, as a watch is: to grow and blossom at a certain season, and wither at another like a plant; but if some untoward circumstance limits his threescore and ten years, as if the watch stopped before its time, we might fairly regard the limitation or the stoppage as unnatural, using that word in its narrowest conventional sense. Now, so it is with old age as compared with dementia. Old age is life coming to its natural end: the watch is run out. But dementia is something more: it is the occurrence of circumstances inimical to life other than those which may be classed under the phrase premature old age. There is an actual derangement of mind. In old age, the senses are the first part of a man to fail: the infirmity creeps inward. In dementia, it is the inner sense which first manifests decrepitude: the infirmity spreads outwards. In dementia, memory fails before sight is affected. The man forgets everything that happened yesterday or last week: he forgets people's names; and it is scarcely in the same way that an old man's memory is defective. The old man is puzzled: he knows he has forgotten the name. He institutes a search in memory, and cannot succeed in recovering the name, but the dement may probably be altogether lethargic, or give a name to the individual which really belonged to some acquaintance of times long since passed.

§ 281. **The Incoherence of Dementia considered Psychologically.**—The derangement of the mind of the dement is strikingly displayed if we examine any of his thoughts in relation to the laws of association. We are strongly impressed with the belief that in health we find, as it were, the type of every mental disease. Error is only a part of a truth taken for the whole, as Cousin observes, but even in truth we find this same tendency under the name of a figure of speech, which is called synecdoche. So it is in the above question,

the disease is really found in the health just as the error is in the truth. We find some healthy propensity exaggerated, and that is a disease. Now in examining the [205]relation of dementia to one of the most curious of mental laws, we will find an example of this principle. Sir William Hamilton, while speaking of the laws of association, tells how once when he thought of Ben Lomond he immediately afterwards thought of the organization of the Prussian army, and it was only after some time that he was able to trace the connection between these two ideas.[1] He remembered, however, that upon one occasion when he had clambered up out of the world, as it were, upon that Babel of a hill, that he met at the top a Prussian officer. This, he says, was the link between those two somewhat widely separated thoughts. This, then, seems to be a condition of the healthy action of mind that two thoughts may appear in association without, at the same time, forcing upon the attention the associating thought: as a man may remember he has a wife without reasoning directly from the fact of his marriage. Now, in dementia what seems to be spontaneity in ideas is to be accounted for by the absolute forgetfulness of the intermediate associations. Sir William, by taking thought, was able to recall the memory of the Prussian officer and his relation to the idea of Ben Lomond. The individual who suffers from dementia is unable to recall the intermediate thoughts by any effort of will: indeed, he is unable to make the effort which would be necessary. Such an explanation as this explains philosophically the incoherence which exists in dementia, for spontaneity of thought is a kind of incoherence. Is it not in this fact that the truth of the observation of the close connection which exists between eccentricity and genius lies?

§ 282. **Mental Symptoms of Dementia.**—But it is the coherence of thought that is the coherence of nature. To the dement the world soon becomes unintelligible. Familiar objects are not recognized; places in which he has resided are mistaken for other places; times are forgotten; the future is not, the present is a haze, the past is dim. He cannot

[1] Lectures on Metaphysics.

keep these shades separate from one another. He confounds the past of to-day with the past of yesterday. The extraordinary power of similarity in objects has become useless as a means of recognition. All general terms have disappeared, and in this analysis of decay we may study the synthesis of language and its relations to thought, just as in the dead world of stone we read of the evolution of life and the progress of perfecting humanity. The whole of these impressions have become confused. The order [206] which is in nature has left it. The world seems crumbling to them. All the most important bonds of thought, such as the indissoluble relation between cause and effect, identity and difference, concrete and abstract, have become friable, or have disappeared. The whole of the intellectual powers have decayed. The individual is no longer able to follow a conversation. He is drifted along by his thoughts, and he scarcely knows what these are. When he speaks, he may use single words—meaningless fragments of sentences. And then may come the last stage of all, that dire, desolate "sans everything."

§ 283. **The Delusions of Dements.**—Sometimes, however, as a result of the process of the dissociation of ideas, (for all dissociation arises out of defective association,) delusions arise, or illusions haunt the eyes and ears, but they are generally transitory and stupid. "Delusions of suspicion very often arise," says Dr. Crichton Browne,[1] "and these may be either of a definite type or multiform and various. They are much more frequently the latter. This moment the patient fancies that he has been swindled, the next that he has been poisoned, and the next again that he has been beaten and abused. Even the deluslons of the senile dement are dilapidated. Invariably—and this is the important point in diagnosis—they are associated with obvious failure in perception, memory, apprehension, judgment, and depend really upon errors of sense and reasoning."

§ 284. **Excitement occurring in Dementia.**—Occupations are no longer practiced: the individual is either full of

[1] Op. cit., p. 602.

purposeless restlessness, or remains at rest for hours or weeks, empty of everything. They gaze, but do not see: they have ears, but do not hear. They sit or stand, motionless, cold, like stones—like statues made to depict hideous wrecks of men. Occasionally they will laugh or cry, or mutter meaningless nothings: sometimes they become incoherently eloquent, and pour forth profuse jargon. But it is to be remembered that dementia is liable to be complicated by attacks of excitement, as if even waters could give forth fire. The excitement of dementia may well be thought of in relation to real activity of the brain, as the phosphorence of the sea is thought of in relation to real fire. It is fire which we can wash in; it is fire we can sail in; it is fire in waves instead of flames; it is as if one element had forgotten its nature, and by some strange metamorphosis become another. So it is with the paroxysmal mania which occurs occasionally during the progress of dementia. In this condition, the patient is garrulous to a degree; but it is not with the quick-coming fancies of mania, but with an incoherent harping upon the few and meagre ideas which constitute the shifting intellectual life of the dement.

§ 285. **The Emotional Disorders of Dements.**—It is strange how much the good decays while the bad flourishes. The Devil is always the last to quit the sinking ship. Weakness is possibly not compatible with goodness, and some of those persons who have become noted for their appreciation of character have utterly failed to appreciate this true element of excellence. Mr. Thackeray has made all his good characters stupid! This is surely a mistake in art. So it is that dements are even in later stages of the disease very often irascible and obstinate: they have lost the power of being enthusiastic in a good cause; they could not [207]persevere in well-doing. They are lethargic even in their bad qualities. In this disease, it is not uncommon to find morbid propensities displaying themselves, and these most frequently are manifested in perversions of the sexual appetite. Thus we often find that old, fatuous men make foolish marriages. But for the most part, the disease manifests itself in vague discontent, in querulous anxiety, and in testy fretfulness.

On occasions, however, we have observed a prevailing tone of hilarity and hopefulness. All these mental changes which are manifested in conduct are not without their vestiges in the medium through which conduct becomes actual, the flesh. The eye of a dement is generally dull, and moistened with tears. It is slow in its movements, and gives one the impression of a bull's-eye without the light. The skin is generally pale and dry and wrinkled, the pupils dilated, the expression an empty, uncertain, wandering one. The cheeks are hollow, and the frame generally emaciated. There is an inordinate appetite for food, but the organic functions are not much affected. Dr. Crichton Browne accounts for the peculiar character of the remembrances of dements—for it is observable that they have good memory for long past events, while their reminiscence of recent occurrences is curiously defective—by the fact that in this disease there is a well-marked dulling of the perception and increasing imperfection in the processes of sensation, as well as the enfeeblement of the conservative powers themselves. This seems to us to be, to a large extent, true. The fact is that memory is always in the direct ratio to attention. If attention is vivid, memory is persistent: if attention is diffused, memories are fugitive. Now, the condition of the dement in this respect is that he holds every thought simply. He cannot concentrate his attention, and therefore he cannot procure any indelible impressions upon memory.

§ 286. **Physical Symptoms of Dementia.**—Some of the physical symptoms of dementia have already been noted, but there are one or two of such diagnostic value as to require a more detailed description. No great reliance is to be placed on physiognomical diagnosis, and it is to be remarked as somewhat curious that the facial expression of dements is not by any means adequately indicative of the mental ruin. Many of the early acquired habits of manner remain to the dement. The symptom which is most characteristic is, however, the muscular tremors, which are even more persistent and regular than in general paralysis, and it is to be noted that these affect the hands and arms in the first instance. It has been noted that the convulsive movements of epilepsy or

the explosions of energy discharged from certain parts of the brain, are manifested soonest and with most frequency in those muscles which are most intimately associated with voluntary movements. But in dementia the energy is not discharged like a bullet from a gun, but dribbles like water from a leaking vessel. It is manifested not in convulsions, but in muscular tremors. It is an incontinence, in fact, of energy by the tissues of the brain. Still, as we should expect, even this trickling overflow or leakage runs in the channels of use, and those muscles which are most subservient to voluntary action are those which are soonest and most frequently affected by those tremors. Thus it is that the hands and arms and neck and face are the parts most frequently involved. Use being the ruler of the distribution, it was to be expected that these tremors would occur with greater violence on one side of the body than on the other; and observation has proved that that is actually the case. A very interesting and illustrative case is recorded by Dr. Browne, which is well worth quoting. "A patient who was in this asylum about eighteen months ago afforded a good example of senile trembling of the worst type. He was a sexton from Leeds, and, although only sixty years of age, had the aspect of an extremely old man, and labored under distinct senile dementia. His memory had given way fifteen months before he was brought to this hospital, and had become gradually more and more enfeebled. The calendar was a blank to him, and he could not even be brought to remember the days of the week. His apprehension was slow and imperfect, and his attention could not be fixed. He was restless and ill at ease, for ever wondering where he had got to, and spending most of the night in exploring the four corners of his bedroom. Delusions and hallucinations also distressed him: he was about to die, strange figures gathered round him, and fumes of sulphur invaded his nostrils. Emaciated and haggard, he could not walk about without assistance, his inability to do so being partly owing to weakness, and partly to excessive muscular tremor affecting the whole body, but more decidedly its right half. The shaking continued without intermission throughout his waking hours, and prevented him dressing or feeding himself. When he tried to lift anything,

his hand trembled violently: when he spoke, his head nodded and shook and his features quivered. The grasping power of the hand was weakened, and indeed all the muscles were wasted and enfeebled. This singular muscular agitation, we were informed, came on at the same time with the mental failure, fifteen months prior to his admission here, and was preceded by a peculiar, numb, dead feeling in the right foot. The right side had always been more severely affected than the left. It was noted that the left pupil was considerably larger than the right, and that the patient labored under abnormal thermal sensations. Even in cold weather, he would throw off all the bedclothes except one sheet, and complain that his skin was burning, when it was shown by the thermometer to be only of the normal temperature. Treated by a liberal dietary, by wine and by succus conii, this old man considerably improved. He became composed in mind, and the muscular trembling greatly abated. To the end, however, he was demented and afflicted by tremor." But it must be remembered that you may have dementia complicated with paralysis and other nervous disorders. In the last stages of the disease, epilepsies are by no means uncommon. Coma supervenes: then come muscular twitchings, possibly clonic spasms, passing into the final coma. It may be well to note in this place that the pulse of the senile dement is generally slow, the temperature is always slightly below the normal standard, and the patient almost invariably loses weight.

§ 287. **Distinction between Acute and Chronic Dementia.**—[207]The first of these is exceedingly rare, so much so that the utility of the distinction has been doubted. When it does exist, it is marked by profound melancholy or stupor. It is more rapid in its progress, and its stages are not so clearly distinguishable from one another. It may be due to fevers, hæmorrhages, metastases, or suppression of the customary evacuations. It is generally the more curable form of this disease, but it may pass into acute mania. It is presumably caused by softening or other chronic disease of brain. Chronic dementia is very common: it is in this form of dementia that we find the incoherence which we have already described. It may result from apoplexy, epilepsy,

drunkenness, or mania. It very frequently follows masturbation or excessive indulgence in sexual intercourse. It is often simply due to excessive indulgence in life: it is a decay and derangement very often incident to old age. We have already pointed out that this is not simply the ordinary decay of age. There is a clear distinction to be drawn between these two conditions, and it is necessary that this distinction should be borne in mind, because no allegation is more common in courts of law than that all the symptoms mentioned in proof of the existence of dementia are only the indications of that "breaking up" which is due to the ordinary decay of age. To be able to distinguish between these is therefore a matter of much importance. It is of much importance, as we shall hereafter[1] see, in a medico-legal point of view, for while the law becomes vigilant when it is made cognizant of acts done by very old persons, and inquires diligently to see that the actor had the power and the will to do the deed which is ascribed to him, it does not, by any presumption of incapacity, deprive a person, however extreme his age may be, of the capacity to perform all the acts and enjoy all the privileges of a citizen. That this is a most wise rule cannot be doubted. No one can say at what age a man loses the free and intelligent use of his faculties. In the case of some men, the mind continues active long after the body has fallen into the direst decrepitude. "The effect of age upon the vigor of the mind," says an American Judge, "varies so much according to individual constitution, that it is difficult to form a sound, general conclusion on the mere fact of advanced age. In an intellectual sense, there is nothing in the mind, abstractly speaking, tending to decay: its loss of tone and power is consequent upon the ravages of time and disease upon the body, and especially upon the brain, upon which the mind is dependent for manifestation." But the fact that longevity varies so infinitely in accordance with the conditions and circumstances of men, gives very strong grounds for asserting that old age in itself cannot fairly be regarded as a legal disability. It appears that in Madden's tables of the ages of the most distinguished modern philoso-

[1] Post § 292, 298.

phers, jurists, artists, and authors, and in Disraeli's notes on the "Progress of Old Age in New Studies," there are the names of very many men of genius whose intellectual powers were unimpaired at the end of a very long career. And the statistics of Franchiné and Hawkins show that the lives of *literati* are unusually prolonged, or, in other words, that senile decay is abnormally postponed. Dr. Crichton Browne founds an interesting speculation upon these facts, and comes to what we are compelled to think is a correct conclusion, viz., that dementia is a disease which is incident to stupidity, that it follows more closely on the heels of relaxation than upon the tired heels of hard work, and that although mental anxiety, mental grief, or mental shock, may be productive of disease, simple, genuine, honest hard work is productive of conditions of health, of vigor, and of longevity. These circumstances show the importance of coming at correct conclusions as to the real symptoms of the disease which has been designated senile dementia.

§ 288. **The Stages of Dementia.**—The stages in dementia which Pritchard has indicated crudely by the words forgetfulness, irrationality, incomprehension, and inappetency, are in many cases clearly distinguished from one another, while in some cases they are unrecognizable. [208]It is characterized by all the features which we have described, inactivity, incoherence, stupidity, followed by mere oblivion. It is a loss of friends, of places, of the world: it is a loss of mental life. In dementia, the centripetal force of mind seems to have overcome the centrifugal; in mania, the centrifugal seems to have proved too strong for the centripetal. It is only in the balance of these that mental health consists, as it is on the balance of these that planetary safety depends. Rational life seems to lie between mania and dementia. It is the temperate zone of a sphere of which these are the arctic and the torrid regions. Man lives between these, as he is a "pendulum betwixt a smile and a tear."

§ 289. **The Cause Affects the Course of the Disease.**—As in all other diseases the characteristics of its course and progress have a certain relation to the cause. This is not pe-

culiar to dementia. It is, however, sometimes well-marked in cases of dementia which arise from mental shock. It is only what one would expect to find. That a cause lives in its effect, as the features of a father live in his children, is the most natural of all things.

§ 290. **Novelty and Change Causes of Dementia.**—Novelty, which to the young is often one of the conditions of the most perfect health and activity, is often, in those who have grown old, a cause of dementia. The entire change of a man's life, a man's retirement from business which has occupied him for many years, the existence of empty habits, so to speak, the impossibility which exists in old age to reform one's life in conformity with other circumstances, very frequently predispose to this disease. And as rest after habitual labor causes this disease, so some unwonted exertion after long continued rest will not unfrequently have the same effect. This, of course, is more likely to occur where the constitution has become weakened by continued ill health or dissipation. Old age is a weakness, and it is weakness which is a prey to disease.

§ 291. **General Remarks.**—If all these symptoms are taken into consideration in any case which may raise the question as to the presence of dementia, as to its distinction from imbecility, from mania, or from simple old age, little difficulty can we imagine arise in giving a satisfactory answer. As all thought is by contrast, as when we think of "one" we have to think of its "other," as light could not be known without darkness; so we, having still to consider the prominent characteristics of mania, hope that this subject may be made still clearer by the considerations which will naturally arise in the course of that inquiry.

CHAPTER XIII.

THE LEGAL RELATIONS OF DEMENTIA.

§ 292. **Questions of Law to be considered in connection with Dementia.**—Of course, the degree of mental soundness which is necessary to render a person responsible for crime, capable of marrying or entering into any other contract, and capable of giving evidence as a witness in a court of law, requires to be discussed in connection with the disease, the incidents of which we have considered in the foregoing chapter; but the question which it is most important to answer in this connection is the soundness of mind which in the eye of the law is necessary to entitle an individual to make a valid will. As we have seen, dementia is essentially a disease of old age, and as we know will-making is the function of the citizen which is relegated to his declining years. Old men may marry, and it may be of the utmost importance to discover whether they have sufficient mind to give a rational consent. Of course, old men may be called upon to give testimony in legal proceedings, and it may be necessary to determine whether such are to be believed or not; but the infrequency with which these events occur, while it does not relieve us from the necessity for considering the legal questions in connection with them, deprives them of the importance which attaches to questions of testamentary capacity. Wills are made when men are decrepit and old—often when they are stretched upon beds of suffering or of death. By wills the whole of the property of a country is disposed of at least once in each generation; by wills, men who have no longer the fear of the censure of their fellow-men amongst whom they have to live before their eyes, may do most wilful, cruel, capricious actions, and it is therefore of paramount importance to lay down some rules for the determination of the

testamentary capacity of those who dispose of their property by will. We will consider this question in the first instance.

§ 293. **Testamentary Capacity.**—"Whatever degree of mental soundness," says Sir James Hannen in the recent case of Boughton *v.* Knight,[1] "is required for any one of these things, responsibility for crime, capacity to marry, capacity to contract, capacity to give evidence as a witness, I tell you, without fear of contradiction, that the highest degree of all, if degrees there be, is required in order to constitute capacity to make a testamentary disposition; because, you will easily see, it involves a larger and wider survey of facts and things than any one of these matters to which I have called your attention." We cannot but think that this is a correct opinion upon the part of this learned Judge. Very young children are able to understand and appreciate the permitted and the forbidden, which are the principles upon which our criminal law is founded and by which responsibility must be gauged. Very weak minds are capable of conserving the impressions of the senses, and of giving a correct and actual account of what they saw and what they heard, and are consequently in a condition to give evidence. Very low forms of mental capacity are capable of withdrawing will from an object in which it has been posited, and of placing it in something else, which act of mind constitutes the essence of consent, which is, as we know, the essence of contract. But no one but a man possessed of active intelligence and memory can thoroughly understand the particulars of the business to be transacted at the making of a will, to perceive their relations to one another, and to form the rational judgment with regard to them, which is the basis of a valid will. "The elements of such a judgment should be the number of those who are proper objects of his bounty, their deserts with reference to conduct, capacity, need, and what he had before done for them, and the amount and condition of his property." While upon these grounds we think that the learned Judge of the Probate Court is correct in his opinion,[2] we

[1] 42 L. J. Pr. 25; 28 L. T. 562.

[2] Per Lord Redesdale, 2 Dow P. C. 283. See 2 P. Wms. 270; 1 Eq. Cas. Abr. 406

think that his confidence and temerity in anticipating no contradiction was somewhat too great. Thus, from an examination of the American cases, he would have found that it has been held that a loss of mind short of its total absence or perversion will not destroy testamentary capacity,[1] which places the power of testamentary disposition somewhat low in the scale, and further that in one case it was held that although the testator was incompetent to make a valid contract, yet if he had the capacity to know his estate, the objects of his affections, and to whom he desired to leave his money, his will must stand,[2] and that it is admitted that the general rule is that a less degree of mind is requisite to execute a will understandingly than a contract.[3] In early English cases, however, a higher estimate of the mental power necessary to will-making was entertained. Thus Lord Coke laid it down as a rule that the testator must have a "disposing memory," or a "safe and perfect memory."[4] And these words, as interpreted by more recent cases, must be understood to mean a memory which is capable of making the testator cognizant of all his property and all the persons who come reasonably within the range of his bounty.[5] Were it not so—were the memory in such a condition that it presented to the mind only one of several persons equally entitled to the testator's remembrance and consideration, and equally endeared to him by their conduct and their love, and were the instrument of

[1] Newhouse *v.* Godwin, 17 Barb. 236; following Stewart *v.* Lispenard, 26 Wend. 313.

[2] Kirkwood *v.* Gordon, 7 Rich, 474; Terry *v.* Buffington, 11 Ga. 337.

[3] Converse *v.* Converse, 21 Vt. 168. See also Coleman *v.* Robertson, 17 Ala. 84. See also Tomkins *v.* Tompkins, 1 Bailey, 92. Indeed, in some of the earlier cases, the Court seemed to hold that it required absolute idiocy to invalidate a will.—Dornick *v.* Reichenback, 10 Serg. & R. 84. In one case, it was asserted that it required no very great share of reason to make a will where there is no fraud or imposition.—Hester *v.* Lynch, 1 Yeates, 108. In Stevens *v.* Van Cleve, 4 Wash. C. C. 262, it was sasd that a man may, from age or failing memory, be incapable of understanding all parts of a contract, and yet he may be able to direct the distribution of his property by will. In a Scotch case, Hogg *v.* Macgill, 4 Mur. 449, it was expressly stated by the Court that it required a less degree of mind to make a testament than to make a bargain. See also Campbell *v.* Davidson, 4 Murray, 179.

[4] 6 Co. Rep. 23, Case of the Marques of Winchester.

[5] Harwood *v.* Baker, 3 Moore, P. C. C. 282, 290; Herbert *v.* Lounds, 1 Ch. Ca. 24; 1 Dyer, 72 *a*, in marg.; Right *v.* Price, 1 Doug. 241; Ball *v.* Mannin, 3 Bligh, N. S. 1; 1 Dow & Cl. 380; McDiarmid *v.* McDiarmid, 3 Bligh, N. S. 374. See also Marsh *v.* Tyrrell, 2 Hagg. 122; Ingram *v.* Wyatt, 1 Hagg. 401, 3 Hagg. 466; Constable *v.* Tufnell, 4 Hagg. 465.

disposition made upon this presentation—it could not with any reason be called the testator's will; for will only acts upon knowledge or thought, and is in reality knowledge or thought in act. If therefore through any circumstance either the fraud of an interested party, or the grim fraud of disease, the fact of the existence of any of the real objects of the testator's benevolence is kept from him, and the will is executed under this mistaken impression, it is not his will, for had the defect been supplied, he would possibly have made another disposition. It follows, then, that the testator must have reason and understanding sufficient to comprehend the act he is doing, and it is that reason and mind which constitute what is designated testamentary capacity.[1] In the [211]case of Greenwood *v.* Greenwood,[2] an action brought to recover estates under a will the validity of which was disputed, the principal indication of insanity relied on being a strange aversion on the part of the testator towards his only brother, his heir-at-law, on a groundless suspicion of the latter having attempted to poison him, Lord Kenyon, in charging the jury, said: "I take it, a mind and memory competent to dispose of property, when it is a little explained, may stand thus: having that degree of recollection about him that would enable him to look about the property he had to dispose of, and the persons to whom he wished to dispose of it. If he had a power of summoning up his mind so as to know what his property was, and who those persons were that then were the objects of his bounty, then he was competent to make his will." And Erskine, J., in the [217]case of Harwood *v.* Baker,[3] in which case a will had been executed in favor of a second wife, to the exclusion of other members of his family, the testator being in a state of weakened and impaired capacity from disease, producing torpor of the brain, and rendering his mind incapable of exertion unless roused, said: "Their lordships are of opinion that in order to constitute a

[1] Sloan *v.* Maxwell, 2 Green Ch. 572. It is not sufficient that a testator should be corporally present if he is mentally absent when he signed a will.—Right *v.* Price, 1 Doug. 241; Forman *v.* Smith, 7 Lansing (N. Y.) 443. See also a Scotch case, Campbell *v.* Davidson, 4 Mur. 179.

[2] 3 Curteis' App.

[3] 3 Moore, P. C. C. 282.

sound disposing mind, a testator must not only be able to understand that he has, by his will, given the whole of his property to one object of his regard, but he must also have capacity to comprehend the extent of his property, and the nature of the claims of others whom, by his will, he is excluding from all participation in that property, and that the protection of the law is in no cases more needed than it is in those where the mind has been too much enfeebled to comprehend more objects than one, and more especially when that object may be so forced upon the attention of the invalid as to shut out all others that might require consideration. And then, for the question which their lordships propose to decide in this case is, not whether Mr. Baker knew when he executed this will that he was giving all the property to his wife, and excluding all his other relations from any share in it, but whether he was at that time capable of recollecting who those relations were, of understanding their respective claims upon his regard and bounty, and of deliberately forming an intelligent purpose of excluding them from any share of his property. If he had not the capacity required, the property of the disposition made by the will is a matter of no importance. If he had it, the injustice of the exclusion would not affect the validity of the disposition, though the justice or injustice of the disposition might cast some light upon the question as to his capacity."[1]

[212] With regard to the proof of a disposing mind, Brett, J., said, "that it was not sufficient for the testator to understand merely that he was making a will, but they (the jury) had to say whether at the time the will was made the testator had sufficient intelligence to understand substantially the state of his family, and of his affairs, and the disposition of his property, as made by the will, and if he had sufficient power of mind to intend to make such disposition."[2] Again, the words of Cockburn, C. J., in the case of Banks *v.* Goodfellow,[3] are worthy of attention. "In these cases," he says, "it is admitted on all hands that though mental power may

[1] The American decisions are like the English in this respect.—Clarke *v.* Fisher, 1 Paige, 171; Den *v.* Johnson, 2 Southard, 454; Boyd *v.* Eby, 8 Watts, 66; Shropshire *v.* Reno, J. J. Marshall, 91; Daniel *v.* Daniel, 39 Penn. St. 191.

[2] Butterfield *v.* Cure, Leeds Summer Assize, 23 Aug. 1870, author's own notes.

[3] 5 L. R., Q. B. 549, 560.

be reduced below the ordinary standard, yet, if there be sufficient intelligence to understand and appreciate the [216] testamentary act in its different bearings, the power to make a will remains. It is enough if, to use the words of Sir Edward Williams, in his work on Executors, 'the mental faculties retain sufficient strength fully to comprehend the testamentary act about to be done.'[1] 'Non sani tantum,' says Voet, in his Commentary on the Pandects,[2] founding himself on the language of the code,[3] 'Sed et in agone mortis positi, seminece ac balbutiente linguâ voluntatem promentes, recte testamentes condunt, si modo mente adhuc valeant.'" His lordship then proceeded to examine the grounds of decision in Harrison *v.* Rowan.[4] In this case, which was tried in the United States Circuit Court for the District of New Jersey, the presiding Judge laid down the law as follows: "As to the testator's capacity, he must, in the language of the law, have a sound and disposing mind and memory. In other words, he ought to be able to make his will with an understanding of the nature of the business in which he is engaged, a recollection of the property he means to dispose of, the persons who are to be the objects of his bounty, and the manner in which it is to be distributed between them. It is not necessary that he should view his will by the eye of the lawyer, and comprehend its provisions in their legal form, if he has such a mind and memory as will enable him to understand the elements of which it is composed, and the disposition of his property in its simple forms. In deciding upon the capacity of the testator to make his will, it is the soundness of the mind, and not the particular state of the bodily health, that is to be attended to; the latter may be in a state of extreme imbecility, and yet he may possess sufficient understanding to direct how his property shall be disposed of: his capacity may be perfect to dispose of his property by will, and yet very inadequate to the management of business, as, for instance, to make contracts for the purchase or sale of property. For most men at different periods of their lives have meditated upon the subject of the disposition of their property

[1] 1 Wms. Exrs., 6th ed., p. 37, n. X. [2] Lib. 28, tit. 1, § 36.
[3] B. 6, tit. 23, l. 15.
[4] 3 Washington, 585, referred to in Sloan *v.* Maxwell; 2 H. W. Green, Ch., p. 570.

by will, and when called upon to have their intentions committed to writing, they find much less difficulty in declaring their intentions than they could in comprehending business in some measure new."[1]

From these various cases, the true law of this important subject will be readily gathered. The law says that each person who is of sound mind shall be at liberty to dispose of his property by will; and a sound mind, according to law, is one which, at the time of the execution of such an instrument, is not, from a defect of reason, due to disease of mind, incapable of judging of the nature and quality of the act it is doing.[2] The whole of the object which the law has in view is the discovery of the volitional condition of the testator at the time the will was made, the ascertainment of whether or not the alleged will is a true expression of the man's real mind. If the instrument is not such an expression, and if it is really the expression of the will of another, to whose volition the testator was only a hand, then it is no will of his. and the law will not give effect to it as such.[3]

[1] See also Den *v.* Van Vaneleve, 2 Southard, p. 660; Stevens *v.* Vancleve, 4 Washington, p. 262; Sloan *v.* Maxwell, 2 H. W. Green, Ch. 572.

[2] Per Sir James Hannen, in Boughton *v.* Knight, 24 L. J. Pr., p. 25.

[3] But it would be difficult to find a more accurate statement of the law and the reasons for it than that which occurs in Swinburne; pt. 2, sec. 25, pl. 5. "When he that is at the point of death," he says, and the same rule would be accurately applicable to a person in the state of dementia, "and hardly able to speak so as to be understood, doth not make or declare his testament; but at the interrogation of some other demanding of him whether he make this or that man his executor, and whether he give such a thing to such a person, answereth, Yea, or, I do so, in which case it is a question of some difficulty whether the testament be good or not. For if he which doth ask the question of the testator be a suspected person, or be importunate to have the testator speak, or make request to his own commodity, as if to say, Do you make me your executor? Do you give this or that? and, therefore, the testator answer, Yea: It is to be presumed that the testator answered Yea, rather to deliver himself of the importunity of the demandant, than upon devotion or intent to make his will." And he goes on, after adding that persons in such extremity, finding it painful to be disturbed, will give any answer to be quiet; and that some crafty persons take advantage of this circumstance to obtain wills in their own favor. He goes on to give the case of a monk who came to a gentleman, then *in extremis*, to make his will. The monk asked the gentleman if he would give such a manor and lordship to his monastery. The gentleman answered, Yea. Then if he would give such and such estates to such and such pious uses. The gentleman answered Yea to them all. The heir-at-law, observing the covetousness of the monk, and that all the estate would be given from him, asked the testator "if the monk was a very knave," and he answered, Yea. And upon the trial, "for the reasons above said, it was adjudged no will."

§ 294. **Illustration of the Legal Principles in relation to Capacity.**—[212] The case of Kindleside *v.* Harrison[1] is in many respects worthy of careful consideration in connection with this subject, as it gives the *criteria* by which the capacity of a testator is to be examined, especially where there is a mass of contradictory evidence, where the testator is far advanced in years, and where occasional incapacity from violent nervous attacks is admitted; and it shows what weight is to be attached to the mere opinion of witnesses. Andrew Harrison made a will and several codicils: the will and the first four codicils were not opposed, the other codicils were contested. The contested codicils were set up by Mr. Kindleside, who was one of the executors and the residuary legatee named in the will, and they were opposed by Mr. Benjamin Harrison, whose appointment as an executor and the benefits he derived under the will were revoked by these codicils. All these instruments were regularly executed, and the grounds of opposition were, that the deceased labored under dementia (mental imbecility,) so as to be incapable of any testamentary act whatever; and with regard to two of the codicils, it was asserted that they were obtained from the deceased by fraud, circumvention, and importunity.

It was proved that the testator was eighty-six or eighty-eight [213] when the contested codicils were made. It was also proved that the deceased was liable to certain nervous attacks, and it was admitted that during these attacks he was incapable of any rational act. The deceased was admitted to be deaf, to be nervous and low-spirited when anything affected him. His eyesight was perfect, his bodily powers were not much impaired. It was proved that he could run up stairs. These points were not controverted.

Thirteen witnesses were examined to prove the incapacity of the testator. Most of them spoke of a failure of memory, of a defective power of recognizing people, of his being regarded by those about him as a person of weak mind, and of his appearing to be "lost." But their evidence brought out the fact that he was in many ways vigorous in mind and body,

[1] 2 Phillim. Rep. 449.

and that he was able to transact business without assistance. They were all urgent in expressing their opinion that the testator was of unsound mind, and incapable at the time the contested codicils were made of making a valid testamentary instrument. The evidence of William Taylor is very strongly in favor of the hypothesis that the deceased was in a state of senile dementia at the time the contested codicils were executed; but as the learned Judge (Sir John Nicholl) shows, his evidence is not altogether to be relied upon, and his statements are not consistent with many of the accounts of the testator's condition given by witnesses summoned to prove his incapacity. The allegations made as to his losing his sense of delicacy, his getting up in the night, and his undressing himself in the day, were in effect disproved. The evidence of Mr. Boodle, the solicitor, who had to do with the execution of the codicils, is important. It shows that at the time of their execution, Mr. Boodle, although he thought the deceased's memory defective, did not regard him as permanently incapable, and when compared with the evidence of Mr. Jukes, the medical man, and Mr. Roberts, it appears that any supposition that the testator labored under such mental defect as to render him incapable of a valid testamentary act is untenable.

It was satisfactorily proved that he was able to settle bills, to draw his own drafts, to write letters, to play cards, to go about by himself, and that he comprehended the state of his affairs; and many of the witnesses summoned in support of the codicils assert that they regarded him as a person of sound mind, whose memory and understanding were unimpaired.

[214]With regard to this part of the case the learned Judge says: "Now these accounts, with the bills regularly paid and endorsed, these drafts drawn, these counterchecks registered and marked with the date and sum for which they were drawn, the corresponding entries in the book of expenditure, prove mind and understanding, and thought, judgment, and reflection very strongly, and, in a person of his great age, of a most extraordinary and unusual degree. * * * It is proved to my satisfaction that he possessed his mental fac-

ulties in an extraordinary degree, considering his great age, and that he had a testamentary capacity quite equal to a testamentary act of no very complicated nature."

As to the allegation that some of the codicils were obtained by fraudulent excitement, and undue solicitation practiced on a weak and unresisting capacity, Sir John Nicholl, after going most carefully into the evidence, decided, upon the whole of the circumstances of the case, that he must proceed to pronounce for the validity of these codicils, which he did with a firm moral conviction that the Court was giving effect to the wishes and intentions of a capable testator.

§ 295. **Dementia in relation to Commissions and Testaments.**—It is well known that the Court of Chancery will grant a commission in cases in which it would be difficult to predicate actual mental disease. It is in the habit of granting a commission where there is a positive incapacity to manage affairs, and that whether this incapacity is due to disease, age, or intoxication.[1] In *ex parte* Cranmer,[2] Lord Erskine describes the requisite incapacity to subject a person to a commission in lunacy in these words: "The party must be one whose understanding is defunct," who has "survived the period which Providence has assigned to the stability of mind." And Lord Eldon, in another case,[3] stated that it must appear "that the object of the commission is of unsound mind and incapable of managing his affairs." These being the grounds upon which a man is deprived of the management of his affairs, it cannot be doubted that it would seem somewhat illogical to regard these grounds as insufficient for the deprivation of testamentary capacity. The law there is that an inquisition finding a man a lunatic is *primâ facie* evidence of testamentary incapacity existing during the whole period covered by the inquisition.[4] Although there

[1] Ridgeway *v.* Darwin, 8 Ves. 65. It is not necessary to incapacitate a man from will-making that he should be in such a state as to justify a commission. A man may be unequal to the important act of disposing of his property although he is not utterly void of reason.—Mountain *v.* Bunnet, 1 Cox, 356; Lord Donegal's Case, 2 Ves., Sen., 407.

[2] 12 Ves. 445, 452.

[3] Sherwood *v.* Sanderson, 19 Ves. 280, 286.

[4] See Bell's Com. Law of Scotland, Erskine's Principles, Smith's ed., pp. 167, 168; Waddell *v.* Waddell's Trustees, 7 D. 605; and see Yooloe's Case (special report.)

seems to have been doubt at one time on this question,[1] it can no longer be doubted that the above is a correct statement of the law.[2] But the existence of such an inquisition does not preclude proof of a lucid interval; and if the provisions of the will were altogether reasonable and provident, and in accordance with the previously expressed intentions of the testator, these circumstances would go far to prove the existence of such a lucid interval as would entitle the testator to make a valid will during its continuance.[3] Thus Dr. Lushington, in one of the cases,[4] said: "It must be admitted that from that verdict [that upon which the commission was issued] a legal presumption arises against the validity of the will in question. But I am also of opinion that in endeavoring to measure the strength of that presumption, I am bound to look at all the circumstances attending the inquisition, although not to evidence given thereat."[5]

§ 296. **Eccentricity does not Incapacitate.**—It is important in this place to note that mere eccentricity of conduct or manner will not deprive the person in whom these are manifested of the right to dispose of his property by will. Our readers must be familiar with many curious and odd ways which very frequently become a part of the life of old men, and it is therefore important to recognize the fact that these will not be a ground for holding that any will made by a person thus affected is invalid. A recent decision, already referred to, places this beyond doubt. "In considering the question," said Sir James Hannen,[6] "of degree, large allowance must

[1] See Mountain *v.* Bennet, 1 Cox, 356.

[2] Hall *v.* Warren, 9 Ves. 605; Re Watts, 1 Curt. 594; and see Creagh *v.* Blood, 2 J. & Lat. 509; Snooks *v.* Watts, 11 Beav. 105; Cooke *v.* Cholmondely, 2 Macn. & G. 22; Banatyne *v.* Banatyne, 16 Jur. 864. See Sir W. Wynn, Judgment in Cartwright *v.* Cartwright, 1 Phillim. 90.

[3] See per Lord Eldon, in McAdam *v.* Walker, 1 Dow, 178. See also Clarke *v.* Lear, 1 Phillim. 119.

[4] Banatyne *v.* Banatyne, 16 Jur. 486.

[5] The same rule of law is in force in America.—Whitmack *v.* Stryker, 1 Green, Ch. 8; Titlow *v.* Titlow, 54 Pa. St. 216; Stackhouse *v.* Horton, 15 N. J. Ch. (2 McCarter) 202; Robinson *v.* Robinson, 39 Vt. 269.

[6] 42 L. J. Pr. 25; 28 L. J. 562, S. C. See also Judgment of Sir James Hannen in Davis *v.* Gregory, "Times," 16 Jan. 1873, in which he referred to Mudway *v.* Croft, 3 Curteis, 671, and Austen *v.* Graham, 8 Moore P. C. 493. Nor does the fact that the will is harsh, capricious, or cruel, affect its validity,—Sefton *v.* Hopwood, 1 Foster & F. 578.

be made for the difference of individual character. Eccentricities, as they are commonly called, of manner, of habits of life, of amusements, of dress, and so on, must be disregarded. If a man has not contracted the ties of domestic life, or if unhappily they have been severed, a wide deviation from the ordinary type may be expected; and if a man's tastes induce him to withdraw himself from intercourse with friends and neighbours, a still wider departure from the ordinary type must be expected. We must not easily assume that because a man indulges his humours in unaccustomed ways, that he is therefore of unsound mind." And it has been definitely decided that neither peculiarity of character, weakness of understanding, or want of capacity to transact the ordinary affairs of life, will disqualify one to execute a will.[1]

§ 297. **Rule as to Inofficious Wills.**—Those wills which are made in disregard of the natural duty and affection of the testator are not held by the English law to be void. But as such wills may be the result of the weak and yielding nature which is produced by disease or age, and may be extorted by the undue influence of those who are about the testator, the law wisely looks with suspicion and jealousy upon such instruments, and requires very clear proof that it was executed according to instructions, and with the full concurrence of the testator, and while he was in possession of such a degree of mental soundness as to be able to comprehend its import.[2] And the necessity for this caution is more urgently shown, and compliance with this rule of proof more strictly compelled, where the will is drawn up at the instance or in the handwriting of the party to be benefited by it.[3] It

[1] Potts *v.* House, 6 Ga. 324; Stubbs *v.* Houston, 33 Ala. 555. And see Mercer *v.* Kelso, 4 Grattan, 106; Crolins *v.* Stark, 64 Barb. (N. Y.) 112; Reynolds *v.* Rood, 64 Barb. (N. Y.) 256.

[2] Wrench *v.* Murray, 3 Curteis, 623; Montefiore *v.* Montefiore, 2 Add. E. R. 361, 362; Dew *v.* Clarke, 2 Add. 207; Broyden *v.* Brown, 2 Addams, 441.

[3] Raworth *v.* Marriott, 1 Myl. & K. 643. But see Russ *v.* Chester, 1 Hagg. 227; Martin *v.* Wotton, 1 Lee, 130, where such wills are held valid when executed *in extremis*.—Baker *v.* Batt, 2 Moore P. C. C. 317. See also Delafield *v.* Parish, 25 N. Y. 9; Barry *v.* Butlin, 1 Curteis, 637; Crispell *v.* Dubois, 4 Barb. 398; Hughes *v.* Meredith, 24 Ga. 325; Paske *v.* Ollat, 2 Phillim. 323.

need scarcely be added that the presumption against the will is very much strengthened by proof of the mental weakness of the testator.[1]

§ 298. **Rule as to Wills made by very Old Persons.**—We have seen how difficult it is to draw the line between dotage and dementia—we have seen that many of the symptoms of this disease are incident to the decrepitude of old age, and that in many respects these two states closely resemble one another—but still the distinction must be drawn, and we have in the preceding chapter given the rules by which in most cases the natural decay of life may be recognized as distinct from the unnatural decay of senile dementia. It is necessary to draw the distinction, for the law holds that extreme old age, while it raises a doubt as to the testator's capacity, it does so only to the extent of exciting the vigilance of the Court.[2] This rule is evidently the correct one under the circumstances. It would be absurd to allow old age of itself to be a sufficient ground for predicating incapacity, when we have so many instances of green old age—of men who, even in advanced years, have had the strength, activity, and intelligence of the prime of life; but it would also be absurd to deny that "if a man in his old age becomes a very child again in his understanding, and is become so forgetful that he knows not his own name, he is then no more fit to make a testament than a natural fool, a child, or a lunatic."[3] This wise rule has been followed in America. In one case, a person of eighty-six years, and afflicted with disease, was held competent to execute a will.[4] In another, where, although the testatrix was ninety years old, it was shown that the deceased was of sound mind; that the will was in conformity with one executed six years before, when there was no question of her mental capacity, and also with her re-

[1] Vreeland *v.* McClelland, 1 Bradf. Sur. 394.

[2] Kindleside *v.* Harrison, 2 Phillim. 449. See Filmer *v.* Gott, 7 Brown's P. C. 70; Fane *v.* Duke of Devonshire, 6 Brown's P. C. 137; Wheeler *v.* Alderson, 3 Hagg. 574; Bonner *v.* Mathews, Shelford on Lunatics, 2d ed., 327; Bird *v.* Bird, 2 Hagg. 142; Mynn *v.* Robinson, 2 Hagg. 179. See also per Cockburn, C. J., in Banks *v.* Goodfellow, 5 L. R., Q. B. 549, at 567.

[3] 1 Wms. Exrs. 36; Griffiths *v.* Robins, 3 Mad. 191; Mackenzie *v.* Handasyde, 2 Hagg. 211; Potts *v.* House, 6 Ga. 324.

[4] Watson *v.* Watson, 2 B. Monr. 74.

peatedly expressed intentions both before and after the date of the last will; that the provisions of the instrument were reasonable, and were carefully read and explained to the testatrix at the time it was executed; and it appeared that no concealment, deception, or influence, had been used to procure the will, it was established. The Judge, in giving his opinion, said: "Great age alone does not constitute testamentary disqualification, but, on the contrary, it calls for protection and aid to further its wishes, when a mind capable of acting rationally and a memory sufficient in essentials are shown to have existed, and the last will is in consonance with definite, long settled intentions, is not unreasonable in its provisions, and has been executed with fairness."[1] That this is a good rule, that it tends to produce very beneficial effects to those who may be weighed down by many years, and who may be surrounded by those whose affection is rooted in expectation, and whose kindly offices are due to their anticipation of pecuniary advantages, is certain. This has been well put by Chancellor Kent. "A man may freely make his testament," he says, "how old soever he may be. * * * It is one of the painful consequences of extreme old age that it ceases to excite interest, and is apt to be left solitary and neglected. The control which the law still gives to a man over the disposal of his property is one of the most efficient means which he has in protracted life to command the attention due to his infirmities. The will of such an aged man ought to be regarded with great tenderness when it appears not to have been procured by fraudulent acts, but contains those very dispositions which the circumstances of his situation and the course of the natural affections dictated."[2] The vigilance which the Court brings to bear in all cases where the wills of very old persons come under their notice, is a necessary precaution; but it is unnecessary that the law should go further and presume that the wills of all aged persons are executed by others through or by means of the real testator.[3]

[1] Maverick *v.* Reynolds, 2 Bradf. Sur. 360. See also Bleecker *v.* Lynch, 1 Bradf. Sur. 458; Van Huss *v.* Rainbolt, 2 Coldwell, 139.

[2] Van Alst *v.* Hunter, 5 Johnson's Ch. 148.

[3] See some recent cases, Kinne *v.* Johnson, 60 Barb. 69; Lawrence *v.* Steel, 66 N. C. 584; Crolins *v.* Stark, 64 Barb. (N. Y.) 112.

§ 299. **Intellectual Feebleness: Legal Relations of.**—It follows almost necessarily from what has been already said that mere intellectual feebleness will not be regarded as a disqualifying circumstance when the execution of a testament is considered. It might be argued that even a slight degree of mental weakness filled up the meaning of the phrase "unsound mind, memory, and understanding." But, as has been over and over again shown, the question as to the degree of capacity necessary to the enjoyment of the civil privilege of will-making, is a practical question, one in which the good sense of men of the world is called into action, and consequently not a field for the nice discriminations and hair-balance definitions of science. It may be true that real mental capacity is not the same at night as in the morning; that it varies before a meal and after a meal; that it differs in relation to different diseases; but can a man of the world take such circumstances into his consideration in his dealings with his fellows, and if he cannot, can courts of law be expected to pay attention to the minute changes of mental life which can be weighed in no human scales, and which are due to the most occult causes? Sir James Hannen pointed out definitely that a sound mind "does not mean a perfectly balanced mind. If it did, which of us would be competent to make a will? Such a mind would be free from the influence of prejudice, passion, pride. But the law does not say a man is incapacitated from making a will because he proposes to make a disposition of his property, which may be the result of capricious, of frivolous, of mean, or even of bad motives."[1] And neither does the law hold that a man must be as powerful mentally as he always was; that he must have suffered no diminution of bodily or mental vigor in order to be entitled to execute a will.[2] Did it do so, the execution of a will would be well-nigh impossible. But in this connection, the question of undue influence requires to be considered. There are many persons who, either from disease in its earlier advances, or from the natural decay of old

[1] Boughton *v.* Knight, 42 L. J Pr. 25. See Crolins *v.* Stark, 64 Barb. 112; Reynolds *v.* Rood, 64 Barb. (N. Y.) 256.

[2] See Elliot's Will, 2 J. J. Marsh. 340; Dornick *v.* Reichenback, 10 S. & R. 84.

age, are in a position, while able to form and entertain a sound and rational judgment, to be very easily turned from such a purpose by the threats or persuasions of those persons who are near to them. Duress is to be looked at not only in relation to the strength of him who threatens, but in relation to the weakness of him who is subjected to these threats. Duress is, in its widest sense, to be looked on as the substitution of the will of one person for the will of another by means of threats or violence; but the legal results are the same if such substitution takes place through misrepresentation or fraud. Now, many persons are in such a condition that they may be very easily influenced by the solicitations or the threats, the persuasions or commands of those who are beside them, and although the wills of such persons, had they been made in freedom and fairness, would have been held good and valid, their so-called wills, when obtained under the control of such arts as those we have been describing, cannot in the eye of reason or of law be regarded as their wills at all, and cannot be given effect to as such. In all cases, therefore, of old age or mental feebleness, it is incumbent upon the Court to ascertain whether any undue influence has been brought to bear upon the testator before or at the time of the execution of the will; to see that neither threats or importunities of such a nature as to deprive the testator of free agency have been used.[1] Where undue influence, fraud, trick, or circumvention of however slight a nature, has been used in relation to the testamentary act, the proof of mental disease will strengthen the case against the will. It has been distinctly held that a pressure of whatever character, whether it acts on the fears or on the hopes of the individual, if so exercised as to overpower volition without convincing judgment, is a species of restraint under which no valid will can be made.[2]

§ 300. **Mental Facility and its Legal Relations.**—There

[1] It must of course be such importunity as he is too weak to resist—such as will render the act no longer the act of the testator—in order that it may invalidate the instrument.

[2] Hall *v.* Hall, 31 L, J. P. 40; 17 L. T. 152; S. C. 1 L. R. P. 481. See also Lovett *v.* Lovett, 1 Foster & F. 581; Boyse *v.* Rossborough, 6 H. of L. Cas. 2; Parfitt *v.* Lawless, 2 L. R. P. D. 462; Aswell *v.* Lomi, 2 L. R. Prob. 477.

is a mental condition almost short of weakness which we have noted as the very first stage of the disease which is here under consideration, and which is often present in extreme old age, which has received less attention than it deserved. It may be described as a yielding or facile disposition, and in this condition, although the individual is to all appearance capable, he is very easily influenced, and it behooves Courts of law to recognize this condition, and to take care that wills made during its continuance shall be admitted as the will of the testator only after strict proof that he has not been subjected to any importunity. [210]Dr. Alfred Taylor quotes the following note, for which he says he is indebted to a learned Judge: "Another condition may be noticed which often occurs in the experience of lawyers, and to which medical men in attendance on aged persons do not sufficiently attend. A person's mind in extreme old age may be quite intelligent, his understanding of business clear, his competency to converse upon and transact such undoubted, and his bodily strength good; but there may grow upon him a fear and dread of relatives or servants who may have surrounded him, and on whom he may have become perfectly dependent, that his nervous system is wholly overcome so that he has no power to exert his mind in opposition to their wishes, or to resist their importunities. His mind is enslaved by his fear and a feeling of helplessness, so that to that extent, and in matters in which he may be moved by them, he really is facile and imbecile. This state of things seems to be easily brought on in old age, when the faculties are otherwise entire, and the bodily strength considerable. This state of a party's mind at a great age was exhibited in a remarkable case from Scotland, which went to the House of Lords."[1] We do not know to what case Dr. Taylor here alludes, but there are several cases reported in the Scotch reports which show that this condition has been recognized in the courts of that country. Thus in Watson *v.* Noble's Trustees,[2] 18th November, 1825, affirmed 29th June, 1827, a deed of settlement executed by a party capable of disposing of her estate, was reduced upon

[1] Medical Jurisprudence, by A. S. Taylor, M.D., F.R.S., p. 1093.

[2] 4 Shaw, 200; 2 Wil. & Shaw App. 648. See Berry *v.* Anderson, 1 Shaw, Session Cases, 66; 2 Sh. App. 212.

the ground that, at the time of executing it, she was in a weak and debilitated state of mind and unable to judge correctly of its effect in depriving herself of all power to alter, and the deed not being her free and voluntary act, although no undue influence had been used to obtain it. Here we have a party capable of disposing of her estate, and whose settlement of it would have been sustained if made in a simple form easily intelligible; and we have no proof that the party founding on the deed had used undue means to obtain it.[1] It may be well also to allude to Chenie *v.* Sterling,[2] 14th November, 1854. This was a transaction in which a gentleman who had been brought by attacks of paralysis into such a state of nervous debility as prevented him from taking any serious or deliberate views on matters of business had purchased an annuity at a disadvantageous price. The jury having found for the pursuer, the defender attempted to set aside the verdict as contrary to evidence, contending that it was necessary to find "some positive fact proved which amounts in itself to a distinct act or piece of circumvention—some trick—some particular practicing on the mind of the party at a particular time—some details, in short, as to acts and practices which the general term *circumvention* includes; and that if one cannot lay one's hand on distinct instances, detected and proved of particular acts and practices amounting to circumvention there is no ground for supporting the verdict." The Court, however, refused to grant a new trial, holding that where there is evidence of facility and lesion, it is not necessary that anything amounting to actual circumvention should be proved; but it is enough to warrant a verdict if, in the circumstances of the party granting the deed, there was used persuasion, which, acting upon a mind facile and nervously anxious from disease, he was not in a condition to resist.[3]

§ 301. **The supposed Recovery of Mental Power before Death.**—[209]It has sometimes been thought that even in cases of dementia a brightening of the faculties occurred

[1] McNeil *v.* Moir, 2 Shaw App. 207.

[2] 17 Dunlop, Session Cases, 16. See also McDiarmid *v.* McDiarmid, 4 Shaw, 583, affd. 3 Wils. & Sh. App. 37; Gillespie *v.* Gillespie, 19 Fac. Col. 280; Scott's Trustees *v.* Bannerman, 9 Dunlop, 1052.

[3] See also White *v.* Ballantyne, 1 Shaw App. 472.

just before death, and that in this way the disposing power might return to a man even after it had been long in abeyance. There is very little foundation for the belief that this happens except in the rarest cases. The ordinary common error, that all insane men become sane before they die may have had something to do with this belief. That it is an error no one who has been present at the deathbeds of the insane can for a moment doubt. Some of those old prejudices were pretty enough, but so are the ruins of abbeys; and it is as unhealthy to live in the one as it is to live in the other.

§ 302. **Fallacious Tests of Mental Capacity.**—It is not enough to establish the fact of disposing capacity that the party was able to answer simple questions affirmatively or negatively with intelligence. Dr. Taylor has suggested that "if a medical man be present when the will is made, he may easily satisfy himself of the state of the mind of the testator by requiring him to repeat from memory the mode in which he has disposed of the bulk of his property,"[1] and this has been adopted by Mr. Inderwick as a test of capacity in his work on the Law of Wills,[2] and it will be found that this suggestion is really in accordance with the law laid down [211] in the case of the Marques of Winchester,[3] where it appeared by divers witnesses, and by many notorious circumstances, that the marques being sick *et multa provectus senectute* was not of sane and perfect memory, such as the law requires at the making of his supposed will. It has been decided that sane memory for the making of a will does not exist in all cases where the party can speak "yea" or "no," or has life in him; nor when he can answer to anything with sense, but he ought to have judgment to discern and to be of perfect memory.[4] There is nothing more apt to mislead a jury in cases in which the capacity of a testator is in question than the evidence of witnesses who say that they have had conversations with the deceased. Such conversations, if they come to be inquired into, amount possibly to nothing but an exchange of the ordinary courtesies of life; and upon such

[1] Medical Jurisprudence, ed. of 1861, p. 658. [2] Law of Wills, p. 17.
[3] 6 Co. Rep., 23 b. [4] Combe's Case, Moore, 757, 3 Jac. 1.

proofs of intelligence little or no reliance is to be placed. [212]In some of the most advanced states of mental disease, cases in which no question as to the individual's competency to perform civil acts could arise, the insane person is quite capable of answering the ordinary questions which occur in everyday intercourse. But we will hereafter see that such is the influence of habit that it is powerful to move people even in sleep, and so it is that a habit of years for a long time resists the progress of disease. No reliance, then, as a test of the capacity of those who are laboring under dementia in its earlier stages is to be placed in such manifestations.

§ 303. **The Duty of Subscribing Witnesses in relation to the Wills of Insane Persons.**—Dr. Taylor's remark, that if a medical man is present at the making of a will, he can ascertain the capacity or incapacity of the testator, leads one to the consideration of an important question in relation to this subject. If a medical man, or another person who is asked to be a witness to a will, becomes convinced of the insanity of the testator, ought he or ought he not to refuse to be a witness? Dr. Taylor himself remarks, in continuation of the passage quoted above: "Medical men have sometimes placed themselves in a serious position by becoming witnesses to wills under these circumstances, without first assuring themselves of the actual mental condition of the testator. It would always be a good ground of justification, if, at the request of the witness, the testator had been made to repeat substantially the leading propositions of his will from memory. If a dying or sick person cannot do this without prompting or suggestion, there is reason to believe that he has not a sane and disposing mind." "That the statute,"[1] said Lord Camden in Hindon *v.* Kirsy,[2] "had a main view to the quality of the witnesses, will appear from this consideration, viz., that a will is the only instrument in it required to be attested by subscribing witnesses at the time of execution. It is enough for leases and all other conveyances to be in writing. These were all transactions of health, and protected by valuable considerations and antecedent treaties. The power of a court of equity was fully sufficient to meet with

[1] The Statute of Frauds. [2] 4 Burns' Eccl. Law, 85, 88.

every fraud that could be practiced in these cases after the contract was reduced to writing. But a will was a voluntary disposition executed suddenly in the last sickness, oftentimes almost in the article of death. And the only question that can be asked in this case is, Was the testator in his senses when he made it? and consequently the time of execution is the critical moment that requires guard and protection. Here you see the reason why witnesses are called in so emphatically. What fraud are they to prevent? Even that fraud so commonly practiced upon dying men whose hands have survived their heads; who have still strength enough to write a name or make a mark, though the capacity of disposing is dead. What is the condition of such an object in the power of a few who are suffered to attend him, wheedled or teased into submission for the sake of a little ease. Put to the labourious task of recollecting the full state of all his affairs and to weigh the just merits and demerits of those who belong to him by remembering all and forgetting none. * * * Who, then, shall secure the testator in this important moment from imposition? Who shall protect the heir-at-law, and give the world the satisfactory evidence that he was sane? The statute says three credible witnesses. What is their employment? I say to inspect and judge of the testator's sanity before they attest. If he is not capable, the witnesses ought to remonstrate and refuse their attestation. In all other cases, the witnesses are passive, but here they are active, and, in truth, the principal parties to the transaction. The testator is entrusted to their care. Sanity is the great fact the witness is to speak to when he comes to prove the attestation, and that is the true reason why a will can never be proved as an exhibit *viva voce* in Chancery though a deed may, for there must be liberty to cross-examine to the fact of sanity. * * * From the same consideration, it has become the invariable practice of that Court never to establish a will unless all the witnesses are examined, because the heir has a right to the proof of sanity from every one of them whom the statute has placed about the testator."

[1] See Hudson's Case, Skinn. 79; Digg's Case, cited ibid; Walton *v.* Shelley, 1 T. R. 300; Lowe *v.* Jolliffe, 1 W. Bl. 365; Rex *v.* Nueys, Id. 416; Goodtitle *v.* Clayton, 4 Burr, 2225; Bootle *v.* Blundell, 19 Ves. 504; Howard *v.* Braithwaite, 1 Ves. & Bea. 208.

Mr. Redfield, after quoting the words of Chancellor Walworth, who said: "No person is justified in putting his name as a subscribing witness to a will unless he knows from the testor himself that he understands what he is doing. The witness should also be satisfied from his own knowledge of the state of the testator's capacity, that he is of sound and disposing mind and memory. By placing his name to the instrument, the witness, in effect, certifies to his knowledge of the mental capacity of the testator, and that the will was executed by him freely and understandingly, with a full knowledge of its contents. Such is the legal effect of the signature of the witness when he is dead or is out of the jurisdiction of the Court"[1]—goes on to remark: "The impression in England is both in the legal and medical profession that one is bound to give directions on such occasions in regard to what the testator is competent to do, and that the medical attendant is responsible that he does not countenance the act of attempting to execute a will after the patient is incompetent to comprehend its import; that by consenting to become a witness of the act he virtually certifies that the testator is of sound disposing mind and memory; that if such proves not to have been the fact, the character of the medical witness is seriously compromised, inasmuch as he is subjected to one or other of the alternatives resulting from the dilemma in which he is thus placed, either that he was incompetent to detect such incapacity, or else that, knowing of its existence, he voluntarily connived at the creation of an instrument of great importance and solemnity while the supposed actor was in a state of mental unsoundness which incapacitated him for its valid execution. Under such circumstances, the connivance may, with some show of reason, be regarded as implicating the medical witness in a virtual fraud upon the legal disposition of the property which would otherwise follow, since the attempt to execute a will at such a time is getting up the shadow of a legal instrument, the effect of which will be, if successfully carried through, to defeat legal rights which have already practically taken effect and become vested when the simulated agent no longer possesses the capacity

[1] Scribner *v.* Crane, 2 Paige, 147, 149.

for voluntary action. It has always seemed to us there was great justice and propriety in the English view of the subject. We think any gentleman, whether professional or not, would feel delicacy and hesitation in regard to becoming a witness to such a transaction. But with us the public opinion, which is the sovereign arbiter of duty, assumes sometimes to override the dogmas of the written law. It is thus, no doubt, that it has come to be understood here, by some at least, that the witnesses to a will are not to be regarded as having expressed any opinion in regard to the sanity of the testator. It seems to be supposed that they are only witnesses to the act of signing. But when it is considered that the witnesses to a will must certify to the capacity of the testator as well as to the act of execution, the transaction begins to assume a somewhat different aspect. One who puts his name as a witness to the execution of a will, while he was conscious the testator was not in the possession of his mental faculties, places himself very much in the same attitude as if he had subscribed as witness to a will which he knew to be a forgery, which every honorable man could only regard as becoming accessory to the crime by which the will was fabricated, so that it is not improbable that the want of proper appreciation of the discredit resulting from the act of becoming a witness to the execution of a will may, and probably does, result chiefly with us from the general misapprehension of the law upon the subject, rather than from any settled disposition to disregard its dictates if correctly understood."[1] After these clear expositions of the law upon this subject, and after Mr. Redfield's charitable construction of the conduct of those persons who are witnesses to wills in America, it is unnecessary to add anything in this place as to this very obvious duty.[2]

§ 304. **Dementia and the Capacity to Contract.**—We have already expressed our decided opinion that it requires more mental vigor, more active intelligence, to execute a rational and valid will than to enter into a good and binding contract, and we have done so unhesitatingly in spite of the

[1] Redfield's Law of Wills, ch. iii., § 5 n, 3d edition.
[2] 4 Kent's Coms., 12th ed., 508, n. 1, 509, n. (f.)

opposing American authorities which might be quoted against us.[1] Our own observations of the many bartering transactions which take place daily in the wards of lunatic asylums—where we have noted certain patients who are in the habit of rigging the market after the weekly distribution of the tobacco, and who sold it at retail and extortionate prices before the next Saturday arrived—has convinced us that it does not require a large or vigorous or healthy mind to realize all the essential elements of a contract. We have noted many men and women whom we should regard as quite incapable of disposing of their property by will who were nevertheless quite able to make a hard bargain. The law therefore with regard to dements in relation to contracts may, for all practical purposes, be taken from what has been said above with reference to testamentary capacity. Whoever is able, rationally and intelligently, to manage his affairs, may notwithstanding mental weakness due to organic disease or old age, be held to have sufficient mental power to enter into a contract which will bind him and bind his executors after his death. Of course, the real difficulty as to the legal relations of those persons who are laboring under dementia arises only in those cases where the disease has made only slight progress. [209]There is a somewhat dire simplicity in the decision of the question as to the legal relations of persons laboring under senile dementia in the last stage. In such cases there is no difficulty. It is with regard to the validity of acts done during the earlier stages of the disease, or with regard to the responsibilty of the individuals for acts committed while the disease is in an incipient state, that there will be the most doubt. When the disease has gone so far as to deprive the individual of mind, there will not be any difficulty in deciding that he cannot give a rational and free consent. To consent to anything, a man must be aware of what he is about: he must know the nature of the act he is doing, and the consequences of that act. The tests which [214]have been given to indicate in what cases persons laboring under dementia can execute a valid will, will apply to cases in which individuals laboring

[1] Newhouse *v.* Godwin, 17 Barb. 236; Kirkwood *v.* Gordon, 7 Rich, 474; Converse *v.* Converse, 21 Vt. 168; Coleman *v.* Robertson, 17 Ala. 84.

under this disease in the same degree can contract. We have seen what the general law is with regard to the contracts entered into by lunatics,[1] and we have secured a means by which we may judge of who are really to be regarded as lunatics in law; and in this chapter we have shown in what cases those persons who, according to medical men, labor under dementia, come under the legal definition of a lunatic.[2]

§ 305. **The Responsibility of Dements.**—The question of the [215]responsibility of dements for their criminal acts does not come prominently before us. We have treated of the subject of the responsibility of those persons who are not of sound mind in other departments of this work, which bear the names of those kinds of insanity in which criminal acts are most frequently the symptoms of disease. Here we need only point out that in the earlier stages of dementia it is quite possible for an individual to commit a crime properly so called, and that it would be well that he should suffer punishment. It may seem very horrible to hang or imprison a man who is going mad, but there is no more injustice in such an act than in hanging or imprisoning a person who is suffering from any bodily disease—say phthisis. We have heard of a man who was about to suffer the extreme penalty of the law, and who requested that the rope might be put under his arms, on the ground that he had a boil on his neck.

That there would be a useless infliction of punishment, which would amount to injustice and inhumanity, if the offender was in one of the more advanced stages of the disease, we admit. Indeed, whenever the simple connection between the act, and the punishment as a consequence of the act, ceases to be appreciable to the mind of the individual, all infliction of punishment should be done away with. But that there should be any hesitation about punishing a man because he is insane, if he understood that the act he committed was criminal, that it was forbidden, that it was punishable, and if he was able to refrain from its commission if he chose, seems to us an utterly unreasonable demand; and we believe that a man may labor under dementia in its first

[1] Ante Chapter I.

[2] See Kent's Coms., 12th ed., vol. ii., 75, 76, n.-]

stage, and still know all these things, and have the power to refrain from any criminal act, and may, notwithstanding, commit an act which is criminal. In such a case the insanity is an accident to the crime—not an attribute. When it is the latter only, ought it to stand in bar of punishment?[1]

§ 306. **The Case of Mordaunt v. Mordaunt.**—A curious case, in which the question to be decided was whether a lady of high rank was laboring under dementia or was only simulating that disease, has in recent times come before the Divorce Court, and has incidentally led to the discussion of a good many points of interest in relation to medical science and of one in relation to law. Lady Mordaunt, after the birth of a child in February, 1869, confessed to her husband that she had committed adultery with several persons whose names she gave, and her husband, Sir Charles Mordaunt, in consequence of such statement, took proceedings against her for divorce. It was asserted that at the date of the service of notice of the writ, viz., the 30th April, 1869, she was insane, and that in consequence of the mental incapacity which resulted from that mental disease, she was unable to instruct an attorney for her defence. On the part of her husband, it was alleged that she was really fit and competent, and that the state of insanity was assumed in order to avoid the exposure of a public trial. The evidence given in the case was very conflicting. The nurse who remained with her a month stated that she had not observed the least appearance of insanity about her. Mr. Orford, a medical man who attended her in her confinement and until the 18th of March following, stated that there were no symptoms of puerperal mania, and that she labored under no delusions while under his care. He considered her to be shamming on Monday the 8th of March after her confinement, and more or less from that time until the 13th May. The only symptoms he observed were silence and a fixed look. But it is quite unnecessary to do more than allude to the evidence which was given. Besides, Dr. Orford, Drs. Jones and Tyler Smith, deposed that in their opinion Lady Mordaunt was sane; while, on the other side,

[1] The question of the admissibility of the evidence of those persons who labor under dementia is answered in another place, Chapter XXIII., § 433, *et seq.*

Sir James Simpson, Sir James Alderson, Sir William Gull, Sir George Burrows, and Drs. Priestly, Tuke, and Wood, unhesitatingly pronounced her insane. Dr. Russell Reynolds was in doubt as to whether it was real or simulated insanity. The jury found that on the 30th April the respondent was totally unfit to instruct her attorney. Although there are many points of interest in the evidence of the experts who were examined, it may be understood that as they varied very much, and were sometimes contradictory, sometimes inconsistent, they were not worthy of any very prolonged study or diligent consideration. The subsequent proceedings which led to the decision of the legal question to which we have referred were these: In March, 1870, the adjourned summons came on before the Judge Ordinary in chambers, and application was made for an order staying proceedings. It was then arranged that a formal order should be taken, so that an appeal might be presented to the full Court. The order was in the following words: "I do order that no further proceeding be taken in this suit until Lady Mordaunt recovers her mental capacity, and that the petitioner be at liberty to apply to the Court whenever he is able to affirm the respondent's recovery." The case came before the full Court, consisting of Chief Baron Kelly, Lord Penzance, and Mr. Justice Keating, in April, 1870, and in the June following judgment was given—Mr. Justice Keating and the Judge Ordinary being of opinion that the order made should not be varied or rescinded, and that the appeal against it ought to be dismissed; while Sir Fitzroy Kelly was of opinion that the order should be rescinded or varied, and that the proceedings should be stayed only for a limited time, unless the respondent should, in the meantime, recover. In accordance with the judgment of the majority of the Court, the order of the Judge Ordinary was affirmed, and the appeal dismissed with costs. From this order Sir Charles Mordaunt appealed, submitting that the case ought to be remitted to the Divorce Court, with directions to that Court to proceed to the hearing and determining of the same, notwithstanding the insanity of Lady Mordaunt, on the ground that the insanity of Lady Mordaunt was no bar to the further prosecution of the suit; and that if Sir Charles Mordaunt could prove the adul-

tery of his wife, he would be entitled to a decree dissolving his marriage, notwithstanding her insanity at the time of the institution of the suit, or at the time of the pronouncing of the decree. After hearing the arguments of counsel, their lordships propounded certain questions of law to the Common Law Judges, viz., whether, under the statute 20 and 21 Vict., c. 85, proceedings for a dissolution of marriage could be instituted or proceeded with on behalf of or against a husband or wife who, before the proceedings, had become incurably insane. The Judges present during the argument were the Lord Chief Baron, Barons Martin and Pollock, and Justices Keating, Brett, and Denman. The Judges' opinions were as follows: Mr. Justice Brett first read his judgment on the question submitted by the Law Lords for the consideration of the Judges, as given above. After a long examination of the points raised, he came to the conclusion that the simple question was whether the statute gave procedure, for the argument seemed wholly applicable that if a right existed, a remedy must be found. By sections 29, 30, and 31, inquiry was rendered necessary into the respondent's case, and such counter-statements could not be inquired into without personal instructions from the respondent, and these could not be given by the respondent because of lunacy. This principle had been affirmed by both Sir Cresswell Cresswell and Lord Penzance, and, without overruling the opinion of those two eminent Judges, it was impossible to say that the procedure specified in the statute was applicable to this particular case. There were acts specifically required to be done by the statute which could not be done by the respondent if insane, and therefore he should answer the question propounded to him by saying that, in his opinion, a suit for the dissolution of marriage could not be proceeded with where either husband or wife were incurably lunatic before the proceedings were instituted. Mr. Justice Keating held that proceedings could be instituted but not continued against a lunatic after lunacy had been duly found. Lord Chief Baron Kelly said he had read the opinions of Mr. Baron Pollock and Mr. Justice Denman, and they agreed with his own. He then went on to say that he was of opinion that insanity was not an absolute bar to the proceedings for divorce; that the

judgment of the Court below should be reversed, and the proceedings carried on. It was argued for the respondent that these suits were in the nature of criminal proceedings, and could not be carried on against one who was insane, and therefore unable to instruct an attorney; but this was obviously unreasonable and unjust, and the act of Parliament did not justify such a construction. Arguing that divorce suits were a civil proceeding, his lordship instanced certain actions in bankruptcy as being far more in their nature criminal than these suits, and yet no one had ever maintained that they were criminal actions. He further pointed out, in reply to the argument that the dismissal of the appeal would be especially hard on the petitioner, that great and manifold evils must result either way from the decision of their lordships. If the appeal were dismissed, the appellant would be bound for life to a lunatic, and would be prevented from contracting marriage with another woman, while on the other hand if a divorce were granted, the respondent would find herself convicted of an offence of which, if she had been in her right mind, she might have proved her innocence. But the Judges were bound to give effect to the law where it was clear and distinct, without regard to the consequences. His lordship said they must look closely to the words of the statute, and, quoting provisions as to procedure contained in the several sections, he showed that the appellant had complied with them in every particular. What right, then, he asked, had the Court to refuse to decide on his petition? To do so on the ground that the respondent was incurably insane was to infringe the statute, and virtually to make a new law. In his opinion, therefore, the judgment of the Court below ought to be reversed.[1]

The judgment of the House of Lords was delivered on the 22d of June by Lords Chelmsford and Hatherley as follows:

Lord Chelmsford said it was much to be regretted that this question, which was of such painful interest, and so

[1] See "Times," 16th May, 1874. It may be as well to note in this place that adultery by an insane person (using the term in its legal sense) is not a cause for divorce. In this case, it is, from the absence of the consenting will, exactly as if it had been effected by fraud or by means of fear. In these cases, it would have been no ground for a decree, and neither can it in the case of insanity. See Nichols *v.* Nichols, 31 Vt. 328; and see 1 Bishop on The Law of Marriage and Divorce, p. 712.

nearly concerned most important and intimate domestic relations, should have led to a difference of opinion, not only in the Court below, but also among the learned Judges who had assisted their lordships. The question was one that, in whichever way it was decided, necessarily involved the most painful consequences, and the decision of their lordships would establish for the future whether any effect on suits for a divorce on the ground of adultery was produced by the circumstance that the alleged guilty party had been visited by incurable insanity. Confining his attention strictly and exclusively to the act 20 and 21 Victoria, chap. 85, by which the Court below was established, it became necessary to consider whether proceedings for a divorce were of a civil or criminal, or quasi-criminal, nature. It must be borne in mind that the act gave a right not previously existing to obtain a dissolution of marriage for adultery by the decree of a newly-created court of law, and to the provisions of that act alone they must look for the jurisdiction to be exercised. The question depended entirely upon the judicial construction of the act of Parliament. Turning, therefore, to the act as the only guide to the determination of the question raised by this appeal, he proceeded to inquire whether there was anything to be found in it to warrant the conclusion that the lunacy of the respondent created an invincible objection to proceeding with the suit. By the 31st section the petitioner was absolutely entitled to a decree unless any of the acts mentioned in the proviso were proved against him. By the proviso the Court was not bound to pronounce a decree if the petitioner had been guilty of adultery, or had delayed the institution of the suit, or had been guilty of cruelty or desertion, or had shown such wilful neglect and misconduct as had conduced to the adultery, but the respondent would now add another condition, namely, that the Court should not pronounce a decree if the respondent should become incurably insane. These were the only grounds on which the Court, under the act, was not bound to pronounce a decree. With regard to a respondent becoming incurably lunatic, the Legislature had not thought proper to provide for such a case. Either the possibility of such an occurrence did not suggest itself to the framers of the act, or, if it did, they did

not consider it ought to be a ground for staying proceedings; and what the Legislature had not expressly enacted the Judges ought not to presume. After the most anxious and careful consideration, and with no other doubt than that raised by the opinion of two of the learned Judges, he thought there was nothing in the act of Parliament to prevent a suit being instituted or proceeded with where the party proceeded against had become incurably lunatic. He was of opinion that the decree appealed from should be reversed, and the case remitted to the Court for Divorce and Matrimonial Causes, with directions to restore the petition presented by Sir Charles Mordaunt, and to hear and declare the matters referred to in such petition, and pronounce a decree upon the same.

Lord Hatherley, after going into the familiar history of the litigation, and lamenting the retirement of Sir Samuel Martin and the death of Lord Colonsay, said that, although the conflict of opinion showed that the case was one not free from difficulty, he did not feel justified in witholding his decision until it had been more fully argued. The able opinion of Mr. Justice Brett that this was a case not provided for by the statute was, in his judgment, incorrect. The new Court of Divorce had all the powers which had formerly been exercised by the ecclesiastical courts and by Parliament, and had full jurisdiction to deal with all the subjects of her Majesty who were not specially exempted from its jurisdiction. The effect of Mr. Justice Brett's opinion was, that great hardship might be inflicted on an innocent woman if the case were allowed to go on, but that was all. The Court of Divorce had all the powers possessed by the civil tribunals generally as to the appointment of guardians *ad litem* for parties incapable of appearing themselves, and here a guardian had been appointed. The analogy drawn from criminal proceedings was a false one, proceedings for a divorce being in no sense criminal except that the consequences of a decree might be highly penal to a respondent (in loss of status and property,) and to a co-respondent (in heavy pecuniary damages.) If the Legislature must be taken to have purposely omitted all reference to the case of an insane respondent, the inference was that it certainly did not intend to prohibit the continuance of

proceedings instituted against one in that position. The case of Bawden *v.* Bawden was worthy of all respect, but it was not argued, and was, therefore, not an authority in law. On the whole, he thought that nothing would be gained by further discussion, and that the decree appealed from ought to be reversed.

Lord Chelmsford then put the question from the woolsack that the decision of the Court below be reversed, and the case remitted to the Court for Divorce and Matrimonial Causes to be tried in the ordinary way. There being no dissentient, the motion was carried.[1]

[1] Since this decision. a rule *nisi* has been obtained by Sir Charles Mordaunt.

CHAPTER XIV.

EPILEPSIES AND THEIR LEGAL RELATIONS.

§ 307. **Are Epileptics of Unsound Mind?**—[218]Lawyers and medical men have not, so far as we know, paid any attention to the legal relations of this disease. The attention which has been paid to this subject has generally consisted in denying that it has any legal relations at all, except in so far as toothache or phthisis may be said to have legal relations. Lawyers at the present time are, it seems to us, prepared to deny that any bodily disease, or any disease simply affecting bodily functions, should in any way alter the relation which an individual bears to the community of which he is a member. Although each disease may have its psychical aspect—although it may be true that panic is invariably associated with cancer, and that hope is associated with phthisis, yet it would be inexpedient to admit that any such modification of mental health should be considered by law as any disqualification where the exercise of rights is involved, or as any way taking away from the responsibility which a man has where the commission of criminal acts is in question. It would be as reasonable to graduate a man's responsibility with regard to any act in relation to its commission before or after dinner. The question as to whether the existence of epilepsy should be regarded as in any way modifying a man's relations to his fellow-men depends upon another question, and that is, Are all epileptics persons of unsound mind? To decide this is, in the first instance, of importance. To answer it, it is necessary to understand what epilepsy really is.

§ 308. **The real Nature of Epilepsies.**—Much light has been thrown upon this important subject by some of the most recent physiological and pathological researches. Thus Pro-

fessor Ferrier's most important experiments in continuation of the work so well begun by Fritsch and Hitzig, which were first published in the West Riding Asylum Medical Reports,[1] and have been continued by means of the assistance of the Royal Society, confirm an opinion which had been previously held that "chorea is of the same nature as epilepsy, dependent upon momentary and discharging lesions of the individual's cerebral centres."[2] The similarity of choraic, epileptic, and tetanic seizures is by no means an unimportant recognition, and has led to what seems to us a true definition of epilepsy as an "occasional, sudden, excessive, rapid, and local discharge of gray matter."[3] When the brain discharges its accumulated force like a Leyden jar instead of like an ordinary battery by continuous flow, the brain produces an epilepsy instead of producing healthy mental or muscular action. But these local discharges may take place in various organic directions. Free energy, as has been shown by Mr. Herbert Spencer in his admirable essay on "Laughter," will always run in accustomed channels, and, as we might have expected, these explosions take place in the direction of least resistance, and that is the direction in which habit has directed voluntary energy. We find as a fact that epileptic fits usually begin in those parts of the body which have most voluntary uses. "The order of frequency," says Dr. Hughlings Jackson, "in which parts suffer, illustrates the same law. I mean that fits beginning in the hand are commonest; next in frequency are those which begin in the face or tongue, and rarest are those which begin in the foot. The law is seen in details. When the fit begins in the hand, the index finger and thumb are usually the digits first seized; when in the face, the side of the cheek is first in spasm; when in the foot, almost invariably in the great toe."[4] But not only may the direction vary under the influence of past voluntary use or habit, but it may vary infinitely in degree. There may almost be healthy epilepsy. "The longer repair goes on unopposed by appreciable waste," says Spencer, "the greater must become the instability of the nerve centres, and the

[1] Vol. iii. p. 30. [2] Cerebral Physiology and Pathology, p. 95.
[3] On the Anatomical, Physiological, and Pathological Investigation of Epilepsies, by Dr. Hughlings Jackson, West Riding Reports, vol. iii., p. 331.
[4] Lancet, February 1, 1873.

greater their readiness to act; so that there must at length come a time when the slightest impressions will produce motions. On awakening from refreshing sleep, there commonly occurs an involuntary stretching of the muscles of the whole body, showing an immense undirected motor discharge."[1] "A sneeze," says Dr. Hughlings Jackson in the essay already referred to,[2] "is a sort of healthy epilepsy." But from this trivial discharge there are varying degrees of epilepsy, which are ascribed by some physicians to nutrition defective in quality although not in quantity, and which Dr. Hughlings Jackson has classed as follows: (1) A sudden and temporary stench in the nose, with transient unconsciousness; (2) a sudden and temporary development of blue vision; (3) spasm of the right side of the face, and stoppage of speech; (4) tingling of the index finger and thumb, followed by spasm of the hand and forearm; (5) a convulsion almost instantly universal, with immediate loss of consciousness; (6) certain vertiginous attacks. These have been spoken of as partial seizures, but they are really to be regarded as the varying results of stronger or weaker discharges.[4] One of Schroder Vander Kolk's conclusions as to epilepsy is apposite in this place, and when taken in connection with Mr. Spencer's description of the dischargeability of nerve force in motion during health, shows the true nature of epilepsy as well as the fact which we have repeatedly insisted upon, viz., that we always find the type of disease in health, or, to put it in other words, "symptoms of instability in disease are an exaggeration with caricature of the effects of healthy discharges."[3] "The special seat and starting point," he says, "of these convulsive movements is situated in the ganglionic cells of the medulla oblongata, which, as reflex ganglia, possess the peculiar property that when once brought into an excited condition, they may more or less suddenly discharge themselves and communicate their influence to different nervous filaments. After their discharge, a certain time is again

[1] Spencer's Psychology, vol. i., p. 90. [2] Op. cit., p. 326.
[3] Dr. Hughlings Jackson, op. cit., p. 325.
[4] Since this was written, Dr. Hughlings Jackson has contributed some most valuable papers to the Medical Press and Circular upon this most important subject. These are worthy of most careful study.

required to bring them to their former degree of excitability and to render them capable of fresh discharges, just as we see to be the case with electric batteries or in the phenomena of electrical fish."[1]

§ 309. **Common Manifestations of Epilepsy.**—It is obvious from what has been said above that there are innumerable degrees of epilepsy, and that the term "epileptiform," which has been applied to such seizures as are unaccompanied by loss of consciousness, is an unnecessary and confusing distinction. But in a medico-legal aspect, only certain well-marked kinds of epilepsy are of real importance, and in relation to these the definition an "excessive discharge of unstable gray mattter" is not sufficient, and a more detailed description is necessary for the purposes of easy and safe recognition. The epilepsy with which the medical jurist has to do consists of, or is manifested by, obscured consciousness which follows a premonitary sensation or aura which is an abnormal condition of the cœnœsthesis. This sensation is accompanied by pallor of the face; there is a cry, and then an entire loss of consciousness. The muscles are contracted; the thumb is frequently found pressed [219] into the palm of the hand by the fingers which are folded firmly over it. The muscles of the face are twisted generally to one side, the sterno-cleido mastoid being convulsed. The eyes and lips are distorted, and the aspect is hideous. Respiration is suspended, the pulse is quick. The pallor of the face is succeeded by flushing, and subsequently the color deepens to a red purple. The veins of the forehead are swollen, and there is frequently an involuntary discharge of urine, spermatic fluid, and fæces. The mouth generally remains open, the tongue is protruded, the lips are covered with froth and blood, which flows from some wound made by the teeth upon the tongue. On some occasions, however, the teeth are firmly pressed together. This spasm may last from ten to sixty seconds. It is followed by an alternate contraction and relaxation of the muscles, which may continue for one or two minutes. This condition is followed by complete relaxation.

[1] Syd. Soc Trans., p. 283.

There is a deep sigh, stertorous breathing, coma, and a partial or entire unconsciousness even after the coma has passed away. Subsequent to these phenomena a state of mania or of stupidity comes on, and during this stage of the disease the epileptic may be, and often is, dangerous to himself and others. The progress of an attack of epilepsy may be described thus: At first there is a premonitary susceptibility to external impressions; (2) an aura, affecting some of the external senses; (3) coma; (4) excitement; (5) dementia. During each one of these stages of the epileptic seizure there is more or less abnegation of consciousness, the amount of which may be ascertained subsequently by questions which refer to the acts of the individual, or to the events which occurred at the time. For just in proportion to the defect in memory will be want of power to concentrate consciousness. Where there is no attention the person is unconscious; and some people have gone so far in their admiration of attention as to assert that it alone distinguishes the genius from the booby. Besides this enfeebled power of concentration, other mental powers are partially enfeebled, it may be, owing to the mental defect just alluded to, and there is a considerable change in the disposition of the individual.

§ 310. **The Varieties of Epilepsy.**—All these circumstances are observable in connection with this disease, but it, like other diseases, is capable of infinite diversity in its manifestations; and all or almost none of the symptoms above alluded to may in any individual case be discoverable. It may exist [220] simply as the mental aura, which has been called *petit mal*. It may be masked, and "there are," says Falret, "certain incomplete attacks of epilepsy which hold a middle place between simple vertigo and the complete attack during which, in the intervals between the convulsions, the patients appear to be conscious of what is passing around. They speak and act in such a manner as to inspire doubt as to the real nature of these attacks, and to attach to what is said and done in this peculiar state of the nervous system a character of moral liberty to which they possess no title. This singular mental condition resembles in many respects somnambulism, and other extraordinary nervous states. It

may be equally compared to a state of dream."[1] But this subject has been dwelt upon sufficiently above; and a classification of some of the varieties of this disease, although necessarily inadequate and incomplete, has been quoted from one of those who have devoted most attention and intelligence to this obscure and curious disease.

§ 311. **As to the Mental Condition of Epileptics.**—That being the case, it being true that this disease may show itself simply as an involuntary pause, a momentary loss of consciousness, or in connection with convulsions, coma, and maniacal fury, it is necessary to consider the mental condition of those who are liable to epileptiform seizures, and, having arrived at some definite conclusion with regard to the mental state, a consideration of the modification which may be necessary, in the relations of epileptics to their neighbors, will naturally follow. It cannot be doubted that epilepsy is very frequently associated with insanity. As showing the kind of insanity with which it is most frequently associated, Esquirol has shown that of 339 females in Charenton, 12 were monomaniacs, 30 maniacs, 34 furious, 145 demented, 8 idiots, 50 habitually reasonable, but afflicted with frequent loss of memory, and 60 exhibited no aberration of intelligence.[2] Now, although there is a close connection between mental disease and epilepsy, many people would argue that still the epileptic is not necessarily insane. The individual who is liable to epileptic fits is to all appearance in every respect like his fellow-men, except at the time of the seizure. He is able to conduct his business; he is able to perform his professional duties; he is able to continue his amusements and pursuits with as much zest, intelligence, and vigor as at any period before the commencement of the disease. It is not incompatible with the possession of transcendent genius, and the advocate of these views would point to Cæsar and Napoleon as [221]examples of individuals who labored under epilepsy, and were at the same time famous as no insane men could have been. We have ourselves heard medical psychologists point to the writings of some of those

[1] Archiv. Gén. de Méd., t. xviii [2] Maladies Mentales, t. i., p. 274.

persons who are most popular with the reading public at the present time as full of internal evidence of the existence of epilepsy in the authors. If such statements are true, it would be absurd to regard epileptics as insane, and to deprive them of civil privileges or protect them from punishment for criminal acts.

§ 312. **Necessary to consider the Mental Condition at the time of the Seizure.**—But one thing is to be considered, and that is, the mental condition of the individual at the time of the seizure. Although an individual may be, under ordinary circumstances, perfectly sane, still when he is attacked by fever he becomes mad; and just as it is necessary to consider the legal relations of the one, it is necessary to consider the legal relations of the other. It matters very little to law whether the mental excitement and fury which led to a wrong act be the result of fever or epilepsy so that it be of such a nature as will deprive the individual of those faculties the possession of which constitutes responsibility. But besides the excitement and mania which occur in connection with epilepsy, there are other mental states that may have an important medico-legal aspect.

§ 313. **Epilepsy is very often followed by Insanity.**—It is a well-established fact that epilepsy leads to insanity. That a long continuance of epileptic fits will lead to excessive mental weakness and disease amounting to dementia is well understood. But, besides being, as it were, the high road to mental disease, "all authors," says Baillarger, "are agreed in admitting the fact that epilepsy, before leading to complete insanity, produces very important modifications in the intellectual and moral condition of certain patients. These sufferers become susceptible, very irritable, and the slightest motives often induce them to commit acts of violence; all their passions acquire extreme energy;"[1] and many of these acts of violence are to be ascribed to disease, and not to the influence of ordinary motives.

§ 314. **Method of this Chapter.**—We will consider the

[1] Ann. Médico-Psych., Avril, 1861.

stages of an attack of epilepsy in the order of their occurrence. We have seen that these may be roughly divided into three: 1. The conditions premonitory to the attack; 2. The attack itself with the suspension of consciousness; 3. The conditions which occur subsequently.

§ 315. **Conditions Premonitory to the Attack.**—During the premonitory state there is generally considerable confusion and perplexity; the patient wanders about without any [222]purpose, and indulges in various eccentricities of conduct. In this stage the epileptic scarcely understands what he is doing, and has no internal certainty of the clearness of his perceptions. They not unfrequently have "queer feelings" which they are unable to describe. If the epilepsy is associated with insanity, it is at this period that the peculiar delusions and illusions which are found in connection with epilepsy become most prominent. We have been able to ascertain some of those insane beliefs which exist in the minds of those who are laboring under epilepsy with insanity.

1. W. B—— expresses great apprehension lest his head should fall off, and stands for hours holding it on with both his hands. He says it is so unsteady that he is afraid to move, as it would certainly be broken to pieces were it to fall on the floor.

2. A. M—— fancies that he is being hung and run over by railway trains. He clutches at his throat, gasps for breath, and complains of being suffocated and drawn out. At other times he screams out that he is being cut in pieces by the wheels, that his arm is wrenched off, and that he is bruised.

3. F. McN—— is perpetually being beaten and abused in the most shameful way by one of her companions in the wards. She thinks that her bones are broken, and that her body is covered with bruises.

4. J. S—— thinks he is dead and buried, and that it is only a phantom that is filling his place.

5. T. D—— thinks that a little man gets into her head, and produces the fits. She feels him there, and also hears him talking.[1]

[1] Dr. Schupman relates the case of a man who believed himself to be pregnant. Journal de Psychiatrie, 11 Cahier, 47; Ann. Médico-Psych., 2d series, t. i., p, 301.

6. P—— believes that his breath is drawn out of him, that his heart is removed from his breast for a time, squeezed, and replaced. He also maintains that he is visited during the night by God in a white robe, and by three men in smock frocks and masks, who pull his hair.

7. A. S—— before the fit comes on thinks that his brain is turned round.

8. J. M—— imagines after fits that his body is immersed in a burning fiery furnace.

9. W. A—— after the fits declares that his brain is changed into blood.[1]

§ 316. **Peculiar Character of the Insane Beliefs associated with Epilepsy.**—[223] Now, these insane beliefs are interesting in that they are all connected with ideas of violence; and in considering the relation of epileptics to the State, the fact that all insane impressions existing in epilepsy are colored by the belief of injury done by an external cause, will be a matter for careful consideration. That this is almost the invariable drift of ideas in persons laboring under insanity and epilepsy will be proved by other cases than those above alluded to. Thus Dr. Sherlock had an epileptic patient under his care who "imagined that she was addressed by men with unbecoming freedom, and scolded with dreadful imprecations, that she was lashed with ropes, and cruelly lacerated, and that she was drawn into painful attitudes by various mechanical contrivances."[2] Dr. Browne, late commissioner in lunacy for Scotland, in a paper in the Journal of Mental Science[3] upon epilepsy, has said: "I have seen a victim rise panic-stricken from sleep, and flee from imaginary foes to imaginary friends. I have heard described strife and struggles and extravagant gestures, which might have as readily dealt death or injury to those around as been expended on the unresisting air. There are facts which show that suicide has been committed under the influence of such seizures."[4] And with a similar tendency, it has been shown

[1] See also an interesting paper on the Religious Sentiments of Epileptics, by Dr. Howden, Journal of Mental Science, Jan. 1873.

[2] Report of the Worcester Asylum, 1856.

[3] Vol. xi., p. 336.

[4] See also Dr. Maudsley's Mind and Body: London, 1870.

that the existence of epilepsy is associated with meaningless fear, and that in very many cases the epileptic attacks are produced by terror. There are one or two other insane impressions connected with epilepsy which have an interest for those who would understand the real mental phenomena of this disease. One of these is an illusion of sight or a delusion with regard to blood. In the cases above alluded to, the combination of the two beliefs, the one of personal violence and the other with regard to blood or the color red, will illustrate this point; and the story given by Mr. Warren[1] of the delusion which existed at the time of an epileptic seizure, that an old woman in a red cloak came and struck the patient with her crutch, is not fiction.

§ 317. **Epileptics: Insane Feeling of Unhealth, and Desire for Cure.**—One other interesting point is worthy of being noted, and that is the intense desire which exists in connection with epilepsy to be treated medically for the disease. Epileptics are not content unless something is being done to relieve them from [224] their fits. In a case which came under our notice the patient had, with a view of getting rid of his fits, drunk his urine at 12 o'clock each night. He imagined that he had been better for it. But this is not peculiar to one case, it is to be found in all; and if we examine into the history of superstition in connection with disease, we will find that most of the superstitious beliefs, with regard to cures, have reference to the falling sickness. Thus, in Austria it is believed that a murderer's blood cured the disease. In Scotland, within a very few years, cocks have been sacrificed, and gold and silver water has been sprinkled in the name of the Trinity, with a view to the same desirable end. We have ourselves been able to ascertain the details of a case in which incestuous connection was determined on in family council, with a view to the removal of epilepsy which existed in a daughter of the house, and in which the connection alluded to resulted in the birth of a child, and not in the cure of the epileptic. This strange method was adopted, and this absurd superstition believed in, in a highly

[1] Diary of a late Physician.

civilized English county within the last few years. We cannot but think that there is some connection between these superstitions and the desire of epileptics to be medicated. It is important to bear in mind that these central ideas exist in the individual in a healthy state, but are more prominent before an acute attack of epilepsy. Every man has some central ideas. It would seem as if mental life, like bodily life, had nervous centres, and those central ideas which exist in many forms of mental unsoundness connected with epilepsy have an unhealthy activity analogous to that which exists in many of the nervous centres as a proximate cause of bodily disease.[1]

§ 318. **Condition of Patient after Seizure.**—With regard to the actual epileptic seizure itself little need be said in this place. It has been described with sufficient accuracy to enable its recognition, and we shall consider the capacity and responsibility of individuals who labor under it in another place. The stage of the disease which follows a seizure is of more interest to the medical jurist. Before we consider it, we must point out the fact that much epilepsy exists which does not find vent in seizures, just as there is much electricity in heaven and earth which does not produce lightning and thunder. It requires a certain disproportion in the amount of electricity contained in those scales—the heaven and earth—before an interchange takes place, and so it requires a certain want of equilibrium between those scales, man and his environment, before [225] an actual attack of epilepsy is produced. But there are many flashes of lightning carried down a rod into a well, and so there are many abortive epileptic fits carried off in local convulsions or tremors of the muscles, in losses of memory, in momentary unconsciousness, in "queer feelings," and in temporary stupidity. Now, this condition is very much like that which occurs after a severe epileptic fit. The well-marked attack is followed, it may be, by fury, it may be by stupidity, and these mental conditions are very often accompanied by abortive fits. Now, it is very often in this stage of the disease that the patient is most

[1] See a paper by Dr. Browne on "Epileptics, their Mental Condition," Journal of Mental Science, Oct. 1865.

dangerous to himself and others. The mental weakness, the stupidity, no less than the mania, may lead directly to what has been described as an impulse, and may produce acts of violence and atrocity for which the individual is not really responsible, and for which the law would do well to regard him as irresponsible. It is unnecessary to explain the meaning of the motiveless impulse as used in this work, as some attention has already been devoted to this subject in an earlier chapter, but we would say in this place that we regard the impulse which is due to the mental feebleness following epilepsy as in no way different from that which exists in the minds of those who are feeble intellectually or morally from birth. We would say again that we regard the word motiveless as a misnomer, and ascribe the act to the omnipotence of some one motive. That that motive would be insignificant in a strong healthy mind is true. But the relation is easily understood if we compare ideas to men. An imbecile is insignificant in the world, but in a desert place he is the best man. Amongst very young children he will be the king, and so it is that some paltry motive becomes all-powerful in an empty head.

§ 319. **Criminal Tendencies of Epileptics after Seizure.**—These considerations will show that it is at this stage of the disease, or the recovery, that epileptics are most dangerous. The very fact that their delusions are generally connected with violence, and with the intense feeling of selfishness which is associated with invalidism, would naturally lead one to predicate violence in those who are governed by impulse. Their very disease is itself impulse, and their thoughts are only too apt to bear a close analogy to their disease. The consideration of the unhealthy mental conditions which are consequent upon epilepsy, and of some cases in which these mental conditions have resulted in violent conduct, will further indicate the criminal tendencies of those who labor under this disease, and will show the real difficulty which arises in connection with epilepsy in determining questions of capacity and responsibility. The difficulty which arises in connection with what may be called the partial or temporary imbecility which follows epilepsy is very great. The

fact that it is only temporary is sufficient to account for this difficulty. The man who labors under it may commit some great crime without, what a sane man would call, purpose, but because a simple suggestion became for the time all-powerful; and when he is visited by medical men the day after the commission of the crime, he may be found sane, and much of the mental weakness may have disappeared. The same observation is true of the mania which very often follows epilepsy. The individual may remember all the circumstances of his crime, may deplore its commission, but is generally quite unable to say why he did it. When [226] he becomes sane again, what seemed a motive now seems none, and he says with relative truth, "I don't know why I did it." Owing to the circumstance that epileptics are, during the intervals between fits, to all appearance sane, although there may be considerable impairment of mental strength, and, owing to the fact that abortive seizures may show themselves simply by impulsive acts of violence, or sudden maniacal outbursts, so much so that Trousseau, with an ambition for hypothesis which overleaps itself, has said that the mere commission of a motiveless act of violence "est presque certainement le résultat du chez epileptique,"[1] it follows that epileptics are the most dangerous of lunatics.[2] Nay, further, from the peculiar character of the delusions which find place in the minds of those who are affected by this disease, from the belief that the wounds and bruises which they receive during the attacks, owing, it may be, to the fall or to the convulsions, are the result of personal violence, the impulse of the individual is naturally led to the resentment of violence by means of violence, and it is not at all uncommon to find epileptics homicides. The peculiar ideas with regard to the color red and to blood may have some connection with the atrocity and disgusting details of many of the murders perpetrated by insane epileptics. The existence of these insane impressions is sufficient to account for the direction of mental energy to acts of homicide, and the frequency of the connection between crimes of personal violence and the existence of

[1] Discours à l'Académie de Médicine.

[2] Dr. Bucknell has adverted to the frequency of the association of epilepsy and homicidal impulse.

epilepsy, tends to confirm the hypothesis which has been stated above. One or two cases will illustrate some of the statements made above.

"A peasant in Swabia, of parents of infirm health, æt. 27, and unmarried, was subject from his eighth year to epileptic attacks. Two years ago his disease changed its character without any one being able to account for it, and in place of epileptic attacks the man found himself seized by an irresistible desire to commit murder. He feels the approach of the fit several hours and sometimes a day before it comes on. Immediately when he has the presentiment, he earnestly asks to be tied up and bound up with chains, lest he commit some crime. 'When it takes me,' he says, 'I must kill—I must strangle, were it only an infant.' His mother and father, whom for all that he loves dearly, were the first victims of these fits. 'Mother,' cried he, in a loud tone, 'save yourself, or I must strangle you.' [227] Before the fit he complains of being overpowered by sleep, and yet without being able to sleep. He feels himself greatly exhausted, and experiences slight convulsive movements in the limbs. During the fit he retains the consciousness of his own existence, and knows perfectly that in committing murder he is guilty of a crime. When he has been placed beyond the reach of doing harm he makes contortions and frightful grimaces, sometimes singing and sometimes speaking in verse. The fit lasts from one to two days. When it is over he cries, 'Unloose me; alas! I have suffered greatly, but I have got out of it well, since I have killed no one.'"[1] Another very interesting case is described by Falret.

"V——, æt. 22, was arrested in Paris, at eleven at night, for having wounded with a knife without appreciable motive, and without provocation, a girl of the town, whom he had met on the street. When examined next day he deposed as follows: He had a very indistinct recollection of what had happened, both before and after the crime; of the moment of its commission he had no knowledge nor recollection. He

[1] "Esquirol von Bernhardt II.," p. 371; quoted by Griesinger On Mental Diseases, Syd. Soc. ed., p. 297.

recalled only one thing, and that was that the knife had in some fashion acted of itself. In his flight after the act he had no idea of what he had done, nor until he had gone a considerable distance did he begin to have a distinct notion of what had happened. The history of the youth was as follows: "He did not belong to a family in which epilepsy or insanity had appeared. He had suffered from typhus fever three or four years previously. He had not been subject to headaches. He was often subject to giddiness or stupor, when he was obliged to seize upon some object to prevent himself from falling. It was as if a cloud passed before his eyes. This occurred, upon one occasion, while he was speaking, and stopped him. These attacks returned three or four times a day. He sees blue or red balls floating before him. He is subject to tremblings, which may continue for about a quarter of an hour. He has had a sudden feeling of distress at the throat. He declares that his memory was bad—there are moments when it passes away altogether. His employer often sent him with messages which he forgot by the way. Sometimes he forgets even his ordinary work. When he reads he loses all conception of what he reads; although fond of this amusement, he has been unable for several months [228] to read. He cannot tell whether he is subject to transitory incoherence. He pretends to be a somnambulist during the night; while working, gloomy ideas are suggested; he has thoughts of suicide, and for a year and a half he has often been tempted to throw himself from the bridges. This tendency arises suddenly—he cannot tell how or why. His father died in February last. Four days previously he had attempted to poison himself with a narcotic. He remained for three days locked in his room. He was not habitually passionate, and had never broken anything. It often happened that he left his work abruptly, and wandered without object about Paris, but never lost his way. Upon one of these occasions he made a journey to Amiens, neither entering a house nor eating anything for two days. Upon the day of the assault he had wandered in the country fasting. At the close of the inquiry V—— was sent to Bicêtre as an epileptic lunatic. He was found irresponsible for a motiveless and un-

premeditated act committed in a state of delirium, connected with vertiginous but not with formed epileptic attacks."[1]

We have had opportunities of inquiring into the case of George Lawton, who was an inmate of the West Riding Lunatic Asylum up to the 24th of March, 1871, when he was committed by the coroner to take his trial for the wilful murder of attendant Lomas, at the assizes then being held at Leeds. Upon Monday, the 27th instant, George Lawton was placed at the dock to take his trial. Mr. Baron Cleasby was the presiding Judge. Upon the evidence of Dr. Crichton Browne, Medical Director of the West Riding Asylum, being taken, the jury were asked to return a verdict as to the capability of the prisoner to plead, and returned a verdict that he was incapable.

The circumstances of this case, as gathered from the depositions, are these: Lawton was admitted into the asylum in 1863, and suffered from epileptic fits of a severe character. During his residence in the institution he several times attempted to commit suicide, and shortly before the murder of the attendant, he had struck a fellow-patient in the face with a dinner knife. The deceased (Lomas) was principal attendant in No. 14 ward, in which Lawton had been placed. Upon the afternoon of Friday, the 24th instant, Lomas remained in the ward in charge of Lawton and three other patients, while the other attendants and their charges went out for a walk. About three o'clock an attendant in the airing court [229] heard a cry, and, looking up at the second storey, saw Lawton striking violently at something on the ground with what appeared to be a stick. He hastened to the ward, and met a patient on the steps, who said, "He's killed, and he's killed," and upon entering the padded room, he found Lomas lying in a corner, with his skull fractured in many places. The room was spattered with brains and blood. Lawton was in the dayroom of the ward when he was first seen. He had a poker in his hand, and he said to the attendant, as he was about to enter, "I'll serve you the same if you come in here." That is the whole story. The attendant died ten minutes after the medical assistant was in

[1] Falret, obs. x., p. 478, t. xvii., Archiv. Gén. de Méd.

attendance. The notes of the post-mortem examination upon the body of Lomas indicate that he must have been struck repeatedly with the utmost violence. The condition of the walls and roof of the room in which the murder was committed point to the same conclusion. During the whole of the Friday night succeeding the murder Lawton was restless and maniacal. He sprang out of bed whenever the attendants who were in charge of him turned their heads. The same excitement and restlessness continued during the forenoon of Saturday. Towards evening he became calmer, and could talk rationally concerning the crime he had committed. We had a long conversation with the patient upon the afternoon of Sunday, and came to the conclusion that at the time we observed him he was to all intents and purposes a sane man. He certainly was weakminded. But he described the whole circumstances of the murder with intelligent accuracy. He maintained that he had no ill-will to the deceased, that he did not know why he had done it, and that the deceased had always been very kind to him. When pressed he said he had seen ships and railways on the ceiling of his room before going to sleep; but we did not come to the conclusion that these were insane illusions. He confessed to having done many things to get rid of his fits: to have held his head under the cold-water-tap, to have gone without butter or beef for months past, to have drunk his urine, and all with a view to cure himself of epileptic seizures. He described his condition during the day previous to the murder. He had known that a fit was coming on, and had deposited his money and tobacco with the storekeeper, lest they should be taken from him by some other patient during the unconsciousness which was incident to the attack. He had felt a stiffening of the muscles of his limbs, and had, according to his [230] own account, had a severe seizure in the dayroom upon that day. His memory with regard to the occurrences of the morning of the Friday was not perfect. He sometimes said he remembered being spoken to while at dinner by the medical superintendent, and at other times he did not remember it. He said that he had refrained from taking meat that day, because he thought it would do his soul good. He said that he himself was a Methodist, but that he did feel better upon

the Saturday morning for the abstinence. With regard to the crime itself, he knew it was wrong. He knew that persons who were in their right mind and who committed murder were hanged, but he seemed to regard himself as exempted from punishment because he had fits, and because he sometimes did not know what he was doing. He said he knew swearing was wrong: he thought it more heinous than murder. He imagined that if Lomas was good he must have gone to heaven, and he said he hoped he had not done him any harm. He repeatedly asserted that he liked Lomas, the murdered man, and that he did not know why he had done what he had done. He spoke of having on a former occasion tried to jump through a glass-door, and having, before he was admitted to the asylum, laid himself down on the rails that he might be run over. He seemed to connect these acts, or the conditions existing when they were done, with the murder of his attendant, or the conditions which were present at the time of the commission of the crime. From the whole interview—from what he said, from his manner of saying it, from the muscular tremors which every now and then were observable in his limbs—we came to the conclusion that the crime for which he was to be tried was due to a simple suggestion arising during the stupid condition which succeeds an attack of epilepsy, and that the temporary imbecility was succeeded by epileptic mania, which was in its turn followed by a gradual restoration to the normal condition of health. In our presence, the patient showed that he was able to read, that he understood the simple rules of arithmetic, and that he was cognizant of the ordinary doctrines of religion in much the same way as other people of the same class and with the same amount of education are. There was considerable mental weakness, but it seemed to us to be of such a kind as would not have incapacitated the patient in any way, civil or criminal, had he been free from epilepsy.

§ 320. **Criminal Propensities developed during the Seizure.**—[231]The danger that arises to others during the

[1] An interesting case will be found in Dr. Russell Reynolds' Epilepsy, its Symptoms, etc., p. 207.

preliminary stage of an epileptic attack, and that which is present after the coma has passed away, cannot be exaggerated. But there is actual danger to others during the continuance of what is called the fit itself. Trousseau was consulted by a newly married couple. The lady stated that a short time after their union she had been suddenly awakened during the night by the strange movements of her husband. Suddenly she was attacked, and had it not been that she was succored by a servant, she would have been severely injured. The assault was repeated a few days before the physician was applied to, and upon the latter occasion the wife awakened in time, and, having lighted a candle, witnessed her husband's convulsions, and escaped from the fury which immediately followed. The patient was perfectly conscious of something having happened to him, of which he could give no account, and he admitted that frequently, previous to marriage, he had been subject to vertiginous feelings, which had been misunderstood by the physicians.[1]

§ 321. **The Legal Relations of Epileptics.**—These facts show that there is some necessity to consider the legal relations of those who labor under this disease, and show that there is a necessity for an intelligent adaptation of the principles we have already enunciated to certain cases of the disease which is under consideration. Now, we have seen the proneness of medical men to look upon every disease as, to some extent, depriving an individual of responsibility. We have had occasion more than once to remark upon the unpractical refinements of those persons who have made mental disease their study, and there is ample room still left for the censure of alienist physicians. Those who assert that all epileptics are insane,[2] and therefore irresponsible, err as much upon the one side as the Lord Justice Clerk (Inglis,) who said, "Disease of the brain is not insanity—disease of the brain is bodily disease, and insanity is mental disease, and no amount of bodily disease will justify you in pronouncing the persons insane," did on the other. But there are

[1] Legrande de Saule La Folie devant les Tribunaux, p. 391.

[2] Platner. Quæst. Med. For., p. 6. But see Clarus Beitrage zur Erkennitniss und Beurtheilung zweifelhaften Seelenzustaendu, Leipsic, 1828, p. 96.

some facts with regard to the capacity and responsibility of epileptics which require to be considered, While an attack of epilepsy lasts, the individual is clearly incapable of performing any civil act, and it would be as unjust to hold such an individual responsible for any criminal violence as to hold an individual who is laboring under the delirium of fever responsible for any [232]outrage which he might commit. But with regard to the premonitory conditions and the subsequent state the question is one of much greater difficulty. A very recent judicial decision bears somewhat directly upon this point.

§ 322. **Epilepsy may Incapacitate a Juryman.**—During the trial of Walter Crabtree for the murder of his father, which took place at Leeds upon the 29th of March last, after the evidence for the prosecution had been led, a juryman took an epileptic fit, and was removed from the jury-box. A medical man was in attendance immediately, and upon being summoned to the witness-box by Cleasby, B., he said that "he was of opinion that the juryman in question was suffering from an epileptic fit, and that he would be unable to go on with the trial that day." He also said that he ascertained from the wife of the juryman that he had suffered an injury to his head some years ago, and it was to that injury his wife ascribed the frequency of the fits. In answer to a question put by the Judge, the medical man said a fit might come on at any time, and that it was impossible to say whether he would be in a condition to resume his duties upon the following day. After consulting with Mr. Justice Brett, the presiding Judge said he must hold the juryman permanently disabled, and the jury were discharged.[1]

§ 323. **Incapacity of Epileptics further considered.**—In this case we find an epileptic seizure incapacitating a man from performing one of his civil duties and from enjoying a civil privilege. Not only must the existence of this disease incapacitate a man from doing this one act or enjoying this municipal privilege, but it must necessarily deprive him of

[1] Author's notes of the trial.

the power of doing many acts which as a citizen he would otherwise have a right to do. Thus, any contract entered into by an epileptic during the state of mania which often follows the attack would be invalid, as it is evidently a matter of no importance how long the incapacity lasts if its existence can be satisfactorily proved. But not only should this rule apply to the mania, but it ought to apply with equal force to the temporary imbecility which exists at a certain stage of the disease. In this case, of course, the proof of the existence of a mental condition which deprives an individual of the power of contracting or of the power of disposing of his property is a matter of much greater difficulty, and because of the greatness of the difficulty will be the frequency of the occurrence of cases in which it is impossible to do justice.

§ 324. **Responsibility of Epileptics.**[1]—[233]No one asserts that human tribunals always do right. Any one who is acquainted with the administration of justice must be satisfied that sometimes much injustice is done. And in those cases where civil incapacity or criminal irresponsibility is in question on the ground of the existence of the temporary mental weakness due to epilepsy, it is impossible to predicate that, even with the best medical testimony, justice will always be fairly meted out. But that whenever the existence of that mental condition which renders the individual incapable of judging fairly of motives—whenever that mental state which places the mind at the mercy of one overmastering motive or idea, which may have been made strong by the iron of habit, can be proved to exist, then, upon the legal principles already described, the individual ought to be held irresponsible for criminal acts and incapacitated from the enjoyment of civil privileges. This is no new doctrine. There is not a Judge upon the bench that would not admit that such was his idea of the English law, and it is only because medical men have used technical terms, and not been at the pains to ascertain the real foundations of the legal principle and the psychical fact of irresponsibility or incapacity, that

[1] As to the responsibility of epileptics, see Friedreich Handbuch der girichtlichen Psychologie, p. 637, and Henke Abhandlungen aus dem Gebieta der gerichlichen Medizin, vol. iv., p. 1.

there has been interminable confusion, and in many cases very stupid blunders. A consideration of some of the remarks of the Lord Justice Clerk's charge in the case of George Stephens will show that the above surmise is correct. This was a trial for murder, and the prisoner was proved to be an epileptic. "There are some matters," said his lordship, "connected with the doctrine of legal insanity which it is quite necessary to give you directions about at the outset. Insanity is a term capable of being used in several meanings, and it is very often used by gentlemen of the medical profession in a totally different sense from what it is in use in courts of criminal jurisdiction. A man's mind may be weakened by disease, and may, in a certain sense, be called insane, but not on that account does he cease to be morally and legally responsible for his actions. A man whose mind is weakened or impaired may be more easily excited and provoked than another, just as a man in bad health may be easily irritated; but does he, therefore, cease to be a responsible agent? That is quite out of the question."[1] But it does not seem to have occurred to his lordship that there [234] may be an amount of weakness produced by disease which will reduce the strong man to the level of the idiot; and just as it would not be absurd, and has never been out of the question, to hold that the idiot was irresponsible, therefore it seems to us that, while the mental enfeeblement which follows after epilepsy exists, and is of such a nature as we have described above, the individual thus affected should be held to be incapable of committing a criminal act, which implies the possession of volition, intention, and malice in the individual committing the act. Still we regard epileptics who are not otherwise insane as in every way capable of performing all the acts of a citizen, and liable to all the punishments which citizens incur who violate the laws, except under the conditions above described. We would also be very careful of sifting the evidence adduced in proof of the temporary mania or the temporary imbecility which follows upon epilepsy in some cases; but when it is satisfactorily proved it must necessarily be a

[1] See report in Aberdeen Herald, 22d April, 1865.

bar to punishment, and must invalidate any contracts which the party may have entered into during the existence of this mental state. With regard to crimes committed during the convulsions of the disease nothing need be said.

NOTE.—The following works, which have not been alluded to in the text, may be referred to: Dr. Sieveking's Epilepsy and Epileptiform Seizures; M. Brown-Séquard's Researches on Epilepsy; Dr. Radcliffe's Epilepsy and other Convulsive Affections; Portal's Observations sur la Nature et la Traitement de l'Epilepsie; Delasiauve's Traité de l'Epilepsie; Schroeder van der Kolk's Syd. Soc. Trans.; Maissonneuve's Recherches et Observations sur l'Epilepsie; Voisin's Nouveau Dictionnaire de Medecine et de Chirurgie Pratiques, art. Epilepsie; and article on Epilepsy in Reynolds' System of Medicine, vol. ii., p. 251; also, Dr. Hughlings Jackson's articles recently published in The Medical Press and Circular.

CHAPTER XV.

SOMNAMBULISM.

§ 325. **Sleep and Dreams.**—[235] "Half our days," says Sir Thomas Browne, "we pass in the shadow of the earth, and the brother of death extracteth a third part of our lives." Well has sleep been called "death's brother." In sleep men are in another world—they are in a delirium of dreams. Consciousness is scarcely maintained, identity is sometimes lost, memory is chaos, reason is a lord of misrule. All the mysteries which are brought before us every day are likely to remain mysteries. Their commonness makes the trouble of solution a trouble scarcely ever undertaken. So it is we know little or nothing of the physiology of sleep or dreams. The subject has been as unfathomable as the ocean, to which sleep has been so often compared.

> "And the beasts, and the birds, and the insects, were drowned
> In an ocean of dreams, without a sound;
> Whose waves never mark, though they ever impress,
> The light sand which paves it—consciousness."

That sleep is a succession of ever-varying states has been pointed out;[1] and the alternating passage from waking to sleeping has been quoted as an illustration. A man may sleep deeply or shallowly, and as Bichat has said, "Le sommeil général est l'ensemble des sommeils particulièrs," which shows that it was his opinion that each separate faculty or sense may be at the same moment in totally different conditions. We have all along held that any sense may sleep while others are awake, just as any sense may be deadened and lost while others are still intact; and we have held that

[1] Chapters on Mental Physiology. Sir H. Holland.

the appreciation of this fact in all its bearings would explain many of the circumstances of mesmeric sleep or hypnotism, as it is evident that the circumstances of the production of the sleep must [236] materially influence the phenomena of dreams. The same may be said with regard to trances and catalepsy; and we believe all the mysteries which have so long perplexed the world with regard to those semi-conscious conditions are explicable on the hypothesis that sleep is a series of complex and ever-varying states.[1]

§ 326. **The Physical Causes of Sleep.**—It has been fancifully argued by one physiologist at least that sleep was a change of the brain from the choloidal to the crystaline condition, his theory being founded upon the phenomena he had observed from certain ingenious experiments in freezing the brains of pigeons and other animals.[2] Others seem to think that sleep is a phenomenon of defective nutrition. But little need be said as to the physical causes of sleep in this place. It has always been regarded as the reparation of exhausted power, or as Professor Bain has more recently termed it, the storing up of *vis nervosa*. Professor Bain's theory is perfectly consistent with the views advanced above, for it is evident that the nerve force which is accumulated at different nervous centres will require more thorough recuperation in one place than another, and hence it will follow that a man will fall into a deeper and more profound sleep with one part of his organism than another—a fact that seems to have been recognized with the stupid naked eye of common sense, for we find that in ordinary parlance men speak of their foot sleeping, which seems to us a recognition of the possibility of the insensibility of certain organs at the same time that others are hyperacute. This fact seems to explain many of the peculiar phenomena of somnambulism. In this state, while we find such a condition as can fairly be called sleep, yet at the same time many of the mental faculties are in full activity. The following case will illustrate this fact: "A

[1] See Pascals Pensées, partie i., Art. VI., § 20; Ancellon Essays Philos. vol. ii., 159. With regard to sleep and dreams, Dr. Addington Symonds' Lectures (London, 1855) may be consulted, and some light will be thrown upon the subject by reference to De Quincey's Confessions.

[2] Dr. B. W. Richardson, F.R.S.

postman had to go between Halle and a town eight miles distant. This distance the postman was in the habit of traversing daily. A considerable part of his way lay across a district of unenclosed champagne meadow land, and in walking over this smooth surface the postman was generally asleep; but at the termination of this part of his road there was a narrow foot-bridge over a stream, and to reach this bridge it was necessary to ascend some broken steps. Now it was ascertained as completely as any fact of the kind could be—the observers were shrewd, and the object of observation was a man of undoubted probity—I say it was completely ascertained: 1st, that the postman was asleep in passing over this level course; 2d, that he held on his way in this state without deflection towards the bridge; and 3d, that just before arriving at the bridge he awoke."[1]

§ 327. **Somnambulism.**—The above case is an illustration of somnambulism properly so called. But just as we found that sleep obscured certain faculties more than others, that men slept with different parts of their brain and different faculties at different times, so do we find activity during sleep manifested in various actions, some of which are of a most complex character. Sir William Hamilton thus writes of this curious phenomenon: "In this remarkable state, the various mental faculties are usually in a higher degree of power than in the natural. The patient has recollections of what he has wholly forgotten. He speaks languages of which when awake he remembers not a word. If he use a vulgar dialect when out of this state, in it he employs only a correct and elegant phraseology. The imagination, the sense of propriety, and the faculty of reasoning, are all in general exalted. The bodily powers are in high activity, and under the complete control of the will; and it is well known persons in this state have frequently performed feats of which when out of it they would not even have imagined the possibility. And what is even more remarkable, the difference of the faculties in the two states seems not confined merely to a difference in degree; for it happens, for example, that the

[1] See Sir William Hamilton's Lectures, vol. i., p. 335, quoted from Professor Junker of Halle. See also M. Jouffroy's Mélanges, p. 318, 2d ed., p. 290.

person who has no ear for music when awake shall, in his somnambulic crisis, sing with the utmost correctness, and with full enjoyment of his performance. Under this affection, persons sometimes live half their lifetime alternating between the normal and abnormal states, and performing the ordinary functions of life indifferently in both, with this distinction, that if the patient be dull and doltish when he is said to be awake, he is comparatively alert and intelligent when nominally asleep. I am in possession of three works written during the crisis by three different somnambulists. Now, it is evident that consciousness, and an exalted consciousness, must be allowed in somnambulism. This cannot possibly be denied; but mark what follows. It is the peculiarity of somnambulism, it is the differential quality by which that state is contradistinguished from the state of dreaming, that we have no recollection when we awake of what has occurred during its continuance. Consciousness is thus cut in two: memory does not connect the train of consciousness in the one state with the train of consciousness in the other. When the patient again relapses into the state of somnambulism, he again remembers all that had occurred during every former alternative of that state; but he not only remembers this: he recalls also the events of his normal existence, so that, whereas the patient in his somnambulic crisis has a memory of his whole life, in his waking intervals he has a memory only of half his life. At the time of Locke, the phenomena of somnambulism had been very little studied; nay, so great is the ignorance that prevails in this country in regard to its nature even now, that you will find this, its distinctive character, wholly unnoticed in the best works upon the subject. But this distinction, you observe, is incompetent always to discriminate the states of dreaming and somnambulism. It may be true that if we recollect our visions during sleep, this recollection excludes somnambulism, but the want of memory by no means proves that the visions we are known by others to have had, were not common dreams. The phenomena do not always enable us to discriminate the two states. Somnambulism may exist in many different degrees: the sleep-walking, from which it takes its name, is only one of its higher phenomena, and one comparatively

rare. In general, the subject of this affection does not leave his bed, and it is then frequently impossible to say whether the manifestations exhibited are the phenomena of somnambulism or of dreaming. Talking during sleep, for example, may be a symptom of either, and it is often only from our general knowledge of the habits and predispositions of the sleeper that we are warranted in referring this effect to the one and not to the other class of phenomena. We have, however, abundant evidence to prove that forgetfulness is not a decisive criterion of somnambulism. Persons whom there is no reason to suspect of this affection often manifest during sleep the strongest indications of dreaming, and yet when they awaken in the morning retain no memory of what they may have done or said during the night. Locke's argument that because we do not always remember our consciousness during sleep, we have not, therefore, been always conscious, is thus, on the ground of fact and analogy, disproved."[1] Dr. Rush has written thus of this curious state: "Dreaming is a transient paroxysm of delirium: somnambulism is nothing but a higher grade of the same disease. It is a transient paroxysm of madness. Like madness, it is accompanied with muscular action, with incoherent or coherent conduct, and with that complete oblivion of both which takes place in the worst grade of madness. Coherence of conduct discovers itself in persons who are affected with it undertaking or resuming certain habitual exercises or employments. Thus, we read of a scholar resuming his studies, the poet his pen, and the artizan his labors, while under its influence, with their usual industry, taste, and correctness. It extended still further in the late Dr. Blacklock of Edinburgh, who rose from his bed, to which he had retired at an early hour, came into the room where his family were assembled, conversed with them, and afterwards entertained them with a pleasant song without any of them suspecting he was asleep, and without his retaining after he awoke the least recollection of what he had done."[2]

[1] Lectures on Metaphysics, 3d ed., vol. i., p. 319 *et seq.* See also vol. ii., p. 271.
[2] Rush on the Mind, p. 302.

§ 328. **Cases of Somnambulism.**—One circumstance is to be borne in mind with reference to somnambulism, and that is, that it is very easily simulated, and all the instances of it which are recorded in books must be received with some suspicion. Some of these, however, seem to be well authenticated; and of these it may be well to refer to a few. The first we will refer to is somewhat like that which we have quoted from Professor Junker. [237]In 1838, a man was brought before Alderman Thorp, who had a parcel cut from his arm although he had strapped it on tightly to prevent this, as he was often falling asleep even during his walk. Yet, even then, he usually took the parcels to their proper directions.[1]

So Franklin assures us that he floated on his back, in a warm bath at Southampton, for nearly an hour asleep; and Galen says of himself that he once walked about a whole night in his sleep till awakened by stumbling against a stone which lay in his way.

"A butcher's boy, about sixteen years old, apparently in perfect health, after dosing a few minutes in his chair, suddenly started up, and began to employ himself about his usual avocations. He had saddled and mounted his horse, and it was with the greatest difficulty that those around him could remove him from the saddle and carry him within doors. While he was held in the chair by force he continued violently the actions of kicking, whipping, and spurring. His observations regarding orders from his master's customers, the payment at the turnpike gate, etc., were seemingly rational. The eyes when opened were perfectly sensible to light. It appears that flagellation even had no effect in restoring the patient to a proper sense of his condition. The pulse in this case was 130, full and hard; on the abstraction of thirty ounces of blood it sunk to 80, and *diaphoresis* ensued. After laboring under this frenzy for the space of an hour he became sensible, was astonished at what he was told had happened, and stated that he recollected nothing subsequent to his having fetched some water and moved from one

[1] Dendy, The Philosophy of Mystery, p. 309

chair to another, which, indeed, he had done immediately before his delirium came on."[1]

One girl was taken to church while the paroxysm was on her. She shed tears during the sermon, particularly during the account given of the execution of three young men at Edinburgh, who had described in their dying declarations the dangerous steps with which their career of vice and infamy took its commencement. When she returned home she recovered in a quarter of an hour, was quite [238]amused at the questions put to her about the church and sermon, and denied that she had been in any such place; but next night on being taken ill she mentioned that she had been at church, repeated the words of the text, and gave an accurate account of the tragical narrative of the three young men by which her feelings had been so powerfully affected.[2]

§ 329. **Psychology of Somnambulism.**—We very often find that even where somnambulism is not present there is somniloquence, and in many cases people learn readily to do little automatic acts during sleep. It is said, we believe, with perfect truth, that the albatross sleeps upon the wing. And all these facts illustrate the principle which is laid down above, that sleep is in many cases local as it were, and that while a man's eyes are shut his sense of touch may be exalted, as that of a blind man's often is; and the impressions of the sense of touch may be in perfect harmony with that minute memory which lives in the eye during some vivid dreams. In this case the memory would be in place of the eye, or any other sense that was for the time in abeyance. And this theory is borne out by the fact that we never have examples of somnambulists doing new things or going to strange places, which would require the co-ordination of the sense of sight and touch, but they invariably do things that they have been in the habit of doing. But of acts that he has been accustomed to do the somnambulist finds nothing too difficult. Thus we have numerous instances of persons who have walked securely in their sleep along the edge of a precipice, of men who have been found swimming in the sea

[1] Dendy, op. cit., p. 313. [2] Combe's System of Phrenology, vol. ii., p. 226.

during their sleep, of children who have been found fishing, and of men who have saddled their horses and ridden away exactly as if they had been awake. The independence of the individual of the special senses which ordinarily accompany actions is, it seems to us, only to be explained on the theory stated above. But further it has been remarked that there is a close relation between somnambulism and epilepsy. To us this seems more than probable. We know that epilepsy most frequently manifests itself by explosions of motor force through the muscles, and we have convulsions or motions dictated by the will of nature which is above and around human volition. So we shall have occasion to see that thoughts are liable to the same explosions or discharges, and we find that ideas are entertained and actions performed which are unconnected with the volition of the individual who is said to think or act. It would seem, then, that the somnambulic actions are of this nature. They are dictated by a discharge of the thought-energy of a certain part of the brain, while the rest of that organ remains asleep. The fact which we have alluded to above that the somnambulist is always in the habit of doing things he has been accustomed to do gives some confirmation to this theory, for as we know epilepsies always manifest themselves first in the muscles which are most used for volitional purposes.

§ 330. **Relation of the Senses during Sonambulistic Sleep.**—On the somnambulism of Lady Macbeth, the physician said, "You see her eyes are open," and the waiting-gentlewoman answers, "Ay, but their sense is closed." But this state of things seems not unfrequently reversed, and an actual transference of the peculiar form of sentiency from one part of the bodily organism to another takes place, although it scarcely goes so far as clairvoyants would have us believe, who can read books or tell the time indicated by the hands of watches which are held behind their heads. In most cases, however, [239] the eyes of the somnambulist are closed or at least only half open, while in a few, as in the case of Lady Macbeth, they are open and staring.

§ 331. **Somnambulism in connection with Catalepsy.**—

What we said above in relation to the connection between epilepsy and somnambulism has further light thrown upon it by the fact that we frequently find somnambulism associated with catalepsy. Of course the two conditions are very easily differentiated. The discharge seems to take place in a different direction, and locomotion or somnambulism proper is not so frequently manifested during the actual seizure as somniloquence. It has been remarked that not unfrequently a far greater fluency characterizes the conversation of the cataleptic during the attack than upon ordinary occasions. Still the whole of the three states are closely allied, and the knowledge of each throws light on the other.

§ 332. **Memory in relation to Somnambulism.**—Sir William Hamilton notes the duality of life which is led by somnambulists. This is, we believe, a well established fact. The waking consciousness of the individual knows nothing of the experiences of the sleeping consciousness. It is as if there were two memories. Mr. Combe mentions the case of a porter who in a state of intoxication left a parcel at a wrong house, and when sober could not recollect what he had done with it. But the next time he got drunk he recollected where he had left it, and went and recovered it.[1]

§ 333. **Nightmares.**—Now, just as passion is a healthy, and the maniac's frenzy is an unhealthy, condition, so may a certain amount of somnambulism be compatible with perfect health, and be excited simply by distressing circumstances occurring in the life of the individual; while, on the other hand, it may be due to a morbid condition of the cerebral organism. This is illustrated by the fact that insane persons are liable to night-terrors, and it is principally with night-terrors that we in this book have to do. It is true that in many instances the raw material of dream-thought, or the stuff that dreams are made of, is bodily sensation. We know that even the more purposeful thought of our waking hours is often directed by sensations, and it would be utterly unphilosophical to deny that the same is true of the thoughts which

[1] Dumas' novel, The Physician, is founded upon the fact of the forgetfulness of all the experiences which may have been gained in mesmeric sleep.

come to us from out of the ambush of sleep. The imperative sensations of a diseased organism, therefore, are the cause of many "nightmares."

§ 334. **Dreams in relation to Time.**—"A singular fact," says Abercrombie,[1] "has often been observed in dreams which are excited by noise, namely, that the same sound awakes the person, and produces a dream which appears to occupy a considerable time. The following example has been related to me. A gentleman dreamed he had enlisted as a soldier, joined his [240]regiment, deserted, was apprehended, carried back, tried, condemned to be shot, and at last led out to execution. After all the usual preparations, a gun was fired; he awoke with the report, and found that a noise in an adjoining room had produced the dream and awakened him."[2]

§ 335. **Dreams and Realities.**—It has been remarked by Ancillon that dreams have frequently a degree of vivacity which enable them to compete with the reality; and if the events which they represent to us were in accordance with the circumstances of time and place in which we stand, it would be impossible to distinguish a vivid dream from a sensible perception.[3] Perhaps it may be well to recognize that the impressions of dreams are very like the impressions which are made upon the mind by the waking senses. While they last, they have as great an authenticity as any of what we call our real perceptions. Only in one particular do they fall short of actual sensual impressions, and that is that we have no repeated experiences of dreams; there is no accumulation of experience in relation to the subjects of dream-thought. We do not lead a connected life in dreams, and hence they lack the force of objective realities, and fail to impress us with their actual existence. When however this is not the case, when men dream a thing three or four times, they say it must be true: it has got the quality of objectivity attached to it, and it "competes" with the world of sense. It is owing to this circumstance that we find the belief in prophetic dreams.

[1] Intellectual Powers, 12th ed., p. 215.
[2] A similar case is given in M. Jouffroy's Mélanges.
[3] Ersais' Philos. II., 159.

§ 336. **Necessity for considering the Legal Relations of Somnambulism.**—How closely the whole subject of dreaming and nightmares is connected with that of somnambulence and somniloquence will be evident from a consideration of the theory of sleep above indicated, and the importance of a thorough appreciation of the subject will be shown by some of the following cases, and by the possible relations of persons laboring under such morbid states to the laws of the country in which they live. The old stock case which has found a place in every work of this kind for the last fifty years claims its place here by prescriptive right. It is that of a monk who late one evening entered the room of the prior of his convent, his eyes open but fixed, his features contracted into a frown, and with a knife in his hand. He walked straight up to the bed as if to ascertain if the prior was there, and then gave three stabs which penetrated the bedclothes and a mat which served the purpose of a mattress. He then left the room with his features relaxed, and an air of satisfaction on his countenance. The next day, on being questioned, he confessed that, having dreamed that his mother had been murdered by the prior, and that her spirit had appeared to him and cried for vengeance, he was transported with fury at the sight, and ran directly to stab her assassin. Shortly after, he awoke and rejoiced to find that it was only a dream.[1] A case in which the waking from a dream influenced the conduct of the individual when awake is given by Dr. Pagan. "Bernard Schedmaizig suddenly awoke at midnight at the moment he saw a frightful phantom, or what his imagination represented as such a frightful spectre. He twice called out, 'Who is that?' Receiving no answer, and imagining that the phantom was advancing upon him, and having altogether lost his self-possession, he raised a hatchet which was beside him and attacked the spectre, and it was found that he had murdered his wife."[2]

§ 337. **Crimes Comitted during Sleep or on Waking from Sleep.**—[241]Dr. Delasiauve, who quotes from a Spanish

[1] Georget's Des Maladies Mentales, p. 127.
[2] Pagan's Medical Jurisprudence of Insanity. London, 1840.

newspaper, gives the following case: "Arsanz, æt. 26, had been a soldier, always of good conduct: his health seemed tolerable: he was subject every spring to epistaxis, also to talking in his sleep. The spring of 1854 passed without epistaxis, and from that time, particularly during the night, he was subject to certain moral disturbance, for which purging was advised. Travelling with a brother and sleeping in the same bed, he was attacked during the night by this excitement, fancied that his bedfellow was going to kill him, and seizing a knife he plunged it into his neck. He then went out and slept on the staircase two hours. When he awoke, he had some obscure consciousness of what he had done; and on seeing his dead brother, he was in despair, and wounded himself severely. The flow of blood restored his reason, and he called for help, and, after some time, told all the circumstances. He was examined by two medical officers, who reported on the soundness of the *intellectual* faculties. The Judge, satisfied that so unusual an act must have its origin in insanity, summoned the Dr. Angel Antonio Diez. He, together with the others, made repeated observations, and observed a strong tendency to melancholy and nocturnal febrile attacks. From these and some other circumstances, they reported that Arsanz had acted impulsively and without moral liberty. Upon this, the prisoner was acquitted."[1]

Another case may be quoted. "A pedlar, who was in the habit of walking about the country armed with a swordstick, was awakened one evening while lying asleep on the high road by a man suddenly seizing him and shaking him by the shoulders. The man, who was walking by with some companions, had done this out of a joke. The pedlar suddenly awoke, drew his sword, and stabbed the man, who soon afterwards died. He was tried for manslaughter. His irresponsibility was strongly urged by his counsel, on the ground that he could not have been conscious of his act in the half-waking state. This was strengthened by competent medical witnesses. He was, however, found guilty."[2]

[1] Journal of Psychological Medicine, July, 1856, p. 484.

[2] This case is quoted in Dr. Winslow's Plea of Insanity in Criminal Cases, from the Medico-Chirurgical Review.

§ 338. **Mental Condition of Waking from Sleep.** — Indeed, there are very many cases in which the confused thoughts of awakening consciousness have led to acts disastrous in their [242]consequences. And this is to be accounted for by the fact that there is a state between sleeping and waking, when the thoughts of the dreamer have as much reality as the facts he is assured of by his senses. There are many states in which, as in the views in a magic lantern, the real circumstances are dissolved, as it were, into the false circumstances of the dream. The actual things in the room are seen, but dreams are in the room too—dreams clothed with the strange reality of substances. Thus, it is not unfrequent in such a state of consciousness to see some one standing in the faint light, and still to recognize as the fire flickers all the articles of furniture which are familiar to one. In such a state it is not difficult to conceive the presence of some vague apprehension, which any external circumstance, as the entrance into the room of some one we disliked, might raise to a feeling of actual terror, which might lead to acts which would, but for the possible irresponsibility of the agent, be criminal. Or it is easy to understand how, when the sleep has deepened with regard to some of the senses, the individual, moved by some wish which was strong even during waking hours, might rise and perform some act from which it required all the force of motives appreciated by a watchful, wakeful mind to restrain the individual.

§ 339. **Question of the Responsibility of Persons for Crimes Committed while in this Condition.**—In such cases, the question as to the responsibility of the individual is one of much interest and importance; and care must invariably be taken to appreciate the ease with which the circumstance which lead to irresponsibility for criminal acts in such cases may be feigned. That many cases do arise in which the effects of dreams either being dreamt, or dreams from which the individual has just awakened, have led to acts for which it would be unreasonable to hold the individual responsible is beyond doubt. Cases are on record in which persons who have gone to bed without manifesting the slightest tendency to self-destruction, and in whose circum-

stances there was nothing to warrant such a frightful act, have, upon being suddenly aroused from a frightful dream, destroyed themselves. "An old lady residing in London awoke in the middle of the night, went down stairs and threw herself into a cistern of water, where she was drowned. The suicide was supposed to be the result of certain mental impressions originating in the mind during sleep."[1] It would be absurd to argue that if dreams are sometimes so [243] disastrous in their consequences to the individual himself that they should in no cases produce acts which would be hurtful to others. Some of the above cases indicate that this is the fact, and it is scarcely necessary to add that when this can be satisfactorily proved, the individual should be held irresponsible for the act committed. Just as a man is held irresponsible if he shoots another who in a joke comes up, and, with all the appearance of reality, demands his money or his life, so if an individual wakens from a dream in which he believes he has been pursued, and that the pursuer had the intention of depriving him of life, he would be irresponsible if he killed some one who was close to him, and whose conduct had led him to confound the reality with the circumstances of the dream.

§ 340. **Real and Feigned Somnambulism.**—The greatest caution, however, must be used before admitting this plea, as it is evident that it is not difficult to reproduce all the circumstances of such an act, while no terror is actually present, and while no circumstances could have led to a misapprehension. The same caution must be used with regard to the determination of the responsibility for crimes committed during actual sleep. One circumstance will assist in distinguishing between real and feigned night-terror or somnambulism. The fact that it has often occurred before will tend to strengthen the belief that it is unfeigned. The circumstances which have produced it in times past should be inquired into, and compared with those going before the attack in which the crime of which he is accused was committed. The similarity of the causes will lead to a certain amount of confidence in

[1] Winslow's Obscure Diseases of the Brain and Mind, p. 616.

the results being similar. If the individual in a state of somnambulism could be seen, as in cases in which it is simulated he may possibly be—for it is his object to convince some one of the reality of the sleep, and may therefore give them opportunities of observing it—some tests may be applied, which will indicate whether it is a real involuntary state, or only an imitation of some of the most prominent symptoms. Thus, as the mind is generally unconscious of what passes around it during the existence of the sleep, tests are not difficult of application. Suppose it to be simulated, and suppose the medical man, who is anxious to determine the fact of its feignedness, be present during an attack or paroxysm; if he choose a time when the somnambulist is standing quietly, and simply goes behind his back, and stands there without doing anything, the impostor will be most anxious to learn what the meaning of this manœuvre is, and will wonder what the medical man [241] is doing behind him. This desire and curiosity will make him turn round; while the real somnambulist, being unconscious of the presence or of the action of the medical man, will stand in the same position, and his conduct will not in any way be modified by the conduct of those around him. Of course tests will suggest themselves in every individual case, and the rarity of its acceptance as a plea, and very high degree and conclusivenesss of the proof of the existence of somnambulism necessary in all cases, will prevent its adoption by impostors. Still, while we would guard against its successful imitation with a view to escaping legal consequences, we must still be prepared to consider the legal relation of those who actually do commit crimes under the influence of night-terrors, or of the dreams of somnambulism. That such crimes are committed we have proved.[1]

§ 341. **Responsibility of Somnambulists considered.**—And first we would say that, just as a man who gets drunk is by law held to be responsible for the acts he commits while

[1] Dr. Maudsley in his recent work says that the American newspapers have recently contained the account of a boy who in his sleep killed another boy, having left his bed in a state of somnambulism, and mounted into his victim's room by means of a ladder. When in prison, he got up in the night in a state of somnambulism, laid hold of a razor, and attempted the life of another prisoner.—Responsibility in Mental Disease, p. 251, n.

he is intoxicated, upon the ground that although when drunk he might not be able to avoid the commission of the crime, yet while sober he was able to avoid getting drunk; so upon a similar principle, we would say that the man who is aware of the existence of night-terrors or of somnambulism, which have in times past led him to the verge of the commission of crime, and who, although thus made wise by experience, has taken no means to avoid the consequences of this abnormal condition, or of the acts which are done under its influence, should be held responsible. On the other hand, it would be unjust to punish a man for a crime committed during sleep, and under the belief that the impressions of his dream were realities, if he was not in such a position as to take precautions against the commission of a criminal act. For example, if the act which has all the appearance of criminality was committed during his first attack, it would be unfair to punish him, as under such circumstances he could have taken no precautions against the events which really happened.[1]

§ 342. **Analogy between the Law as applicable to Delusional Insanity and Somnambulism.**—Another principle ought to regulate the determination of the question of the responsibility of somnambulists. As when an individual who commits a crime under the influence of a delusion is held to be irresponsible if the imagined circumstances would, had they been real, have justified the act in a sane man, so the same rule ought to be applied to the acts of the somnambulist. If a man [245] rises in his sleep and goes to a neighbor's house, believing that he has called him a liar; if in consequence of this supposed insult he commits murder, we hold that he is to be regarded as responsible for the act. If, on the other hand, it could be proved from the words uttered by the somnambulist, from his acts, or from his own corroborated statement with regard to his impressions, that his neighbor was the seducer of his wife, the same act, it seems to us,

[1] "In 1686," says Mr. Dallas in The Gay Science, "a brother of Lord Culpeper was indicted at the Old Bailey for shooting one of the guards, and acquitted on the ground of somnambulism—that is, an unconscious and therefore irresponsible activity." And a very similar case, which occurred in America, is given in Professor O. W. Holmes' Mechanism in Thought and Morals, p. 47–8.

should under such circumstances be regarded as manslaughter. If, however, the somnambulist in his perambulations was met by some one, and shaken with the intention of arousing him; if, owing to this circumstance, he became possessed of the idea that he was attacked, and if in self-defence he killed the man who would have awakened him, we are of opinion that such an act should fall under the category of justifiable homicide, and the individual ought to be regarded as altogether irresponsible. The proper course to be taken under such circumstances would be to deliver over the somnambulist to his friends, on caution to the amount determined on by the Court, to prevent him doing harm to himself or others.

§ 343. **Reasons for the Rule proposed.**—It may seem to many to be illogical to graduate the scale of responsibility of somnambulists in the way indicated. It may be argued that if a man is to be held irresponsible at all for acts committed during sleep, it must be just to hold him irresponsible for all the acts which he commits during somnolence. But it is not so. Many of the acts a man commits during sleep have been thought over during his waking hours. Now, a man who was conscious of his liability to somnambulism, if the law was such as we have suggested it ought to be, would be careful not to indulge in waking thoughts which might lead to unpleasant consequences when he was asleep. It seems to us possible that a somnambulist could be so educated as to make up his mind to an act while he was yet awake, and might carry it out during his sleep. Such a trick would not avail a man under the state of the law which we have recommended. And besides, what seems to be a prudent regulation with regard to insane delusions, would surely be equally satisfactory for the regulation of those who are liable to the exaggerated impressions of dreams, and to be influenced to acts by such impressions. A life which is not infected by envy, hatred, or malice, will not even in sleep tend to criminal acts. Our nights are shadows of our days. Quiet consciences have gentle dreams. So much with regard to the [246]relation of somnambulists to the criminal law. Something must be said with regard to their civil liability.

§ 344. **Civil Disabilities of Somnambulists considered.**—In relation to all such matters as wills and contracts, a person who is liable to somnambulism is exactly in the same position as a lunatic during a lucid interval. He is capable of willing, capable of marrying, capable of contracting. But still it is evident that the existence of somnambulism may be a good ground for avoiding contracts of service which have been entered into in ignorance of the existence of this tendency or propensity. In many cases it might utterly unsuit the individual for the duties he was engaged to perform; and it is equally certain that somnambulism or night-terrors would not be a good ground for a divorce. Under circumstances which it is possible to conceive, but which are very unlikely to arise in fact, somnambulism might become a ground which would warrant a wife separating herself from her husband, even although it had not gone to such an extent as to warrant medical men in signing certificates for his incarceration in a lunatic asylum. That it may pass into actual insanity is evidenced by the close connection which undoubtedly exists between cataleptic somnambulism or hysteria and epilepsy, which is, as it were, a sort of highway leading to mental disease. The above propositions are true, whether the tendency to somnambulism existed previous to the entrance of the individual into the contract, or if it was developed in the individual subsequent to the formation of the contract. This will not be the case, however, where the somnambulism is so slight, or of such a nature as not in any way to interfere with the duties that the person was engaged to perform.

§ 345. **Somnambulist Liable to Action for Trespass.**—A somnambulist is of course liable in an action of trespass for any injury done to the property of others. This is equally true, both in law and in equity, of an insane person or an idiot as of a somnambulist. It must always be borne in mind, when looking at one side of a subject, that there is another side. And in this connection it may be remarked that laws were made for the sane as well as for the insane, and it would not be so if lunatics or somnambulists could commit trespass and do damage without making reparation.

CHAPTER XVI.

DRUNKENNESS.

§ 346. **Definition of Drunkenness.**—[247]Drunkenness is the word in ordinary use for that state of body and mind which is produced by alcoholic liquors, and is used in ordinary every-day transactions as equivalent to poisoning by means of alcohol. Alcohol taken in large does, and in a concentrated form, may cause death suddenly by shock; but the ordinary course of a case of poisoning by means of alcohol—and the same remark is true of ether and of chloroform—is marked by confusion of thought, delirious excitement, nausea and vomiting, and ultimately induces a state of narcotism, and in fatal cases it produces a kind of apoplexy, or causes death by paralyzing the heart.

§ 347. **Description of the Stages of Drunkenness.**—A more minute description than the above is, however, necessary of what is called drunkenness. If the quantity of alcoholic liquid consumed be very great, or if the strength of the liquid be considerable, the symptoms of poisoning may show themselves within two or three minutes after the dose has been taken. On the other hand, when the quantity or strength of the alcoholic liquid swallowed has been inconsiderable, the symptoms may not set in for more than an hour. The first effect is generally a diffused glow spreading from a central heat, accompanied by a comfortable feeling of self-satistion, which is reflected upon the world generally, and even to a sad man it begins to appear "not such a bad place after all." Thought is probably more rapid at this stage just as the pulse is; but rapidity of thought does not always conduce to clearness, and soon there is a slight confusion of thought;

the hilarity continues; the spirit is buoyant; the individual is talkative.

"Fœcundi calices quem non fecere disertum."

But the words stumble. The speech from stammering becomes [248] indistinct; he feels giddiness; he sees double. There are abrupt, almost automatic, movements of the limbs. He makes up for the thickness of his speech by its loudness. He is sometimes ready to take offence at any act upon the part of a neighbor, and becomes quarrelsome. Some men, however, become still more friendly: many men become amorous. The "softer flame" spoken of by Burns seems to burn the brighter for alcohol. There is now a thorough want of concatenation of the impressions conveyed by different nerves. He sees his glass or bottle, and he grasps at it; but he misses it, and possibly stumbles and falls. At length the patient loses the power of speech and the power of voluntary motion. Insensibility, a sort of hideous sleep, comes on. The countenance is bloated and suffused, the eye is injected, the pupil dilated and fixed, the lips livid, and the breathing stertorous. A man may sleep off his drunkenness, or he may reject, by vomiting, part of the poison before it is taken into his system. In cases where death ensues, its approach is indicated by pallor of the face, cold perspiration, a quick and feeble pulse, and total muscular relaxation.

§ 348. **The Psychology of Drunkenness.**—"In order to spend on the one side," says Goëthe, "nature is forced to economise on the other side." This is certainly one of the most universal laws which has been promulgated. We find it in the physical world, and where we want motion, as in the steam-engine, we have to give up heat: where we desire galvanism, we have to sacrifice the chemical potentiality of certain agents, but we find the same law in animal economy. We use the day for labor, and sacrifice the night to sleep. To some minds it is sad to think that an extra exertion requires extra food, but it is true. The law is the same in time as in space. If by means of stimulants we have increased activity just now, nature economises our strength by increased prostration afterwards. Some philosophers have regarded all pleasure as due to increased activity, and all pain as due to

diminution of activity. So when we spend our pleasure to-night, when we have increased satisfaction and more intense vitality just now, we must expect to be compelled by nature to economise our pleasure or suffer pain to-morrow. What we know as depression, headache, [249] thirst, and the other symptoms of a return to sobriety, are the coins of pain we must pay for our pleasure. We cannot both spend and have. If we enjoy the dissipation of a fortune to-day, we must be content to suffer poverty to-morrow. There would, however, be very little harm if we could always make up for the backslidings of nature in us. If by more sleep we could pay off the account of more than ordinary tiredness, a balance of accounts would always be easy; but it is not so. The pain which follows the indulgence of physical pleasure is pain, and men have a desire to be free from pain. Sometimes this desire is so strong that they will be free at any hazard. The wise man knows when it is well to suffer. The man who is nothing of an ascetic is a fool. Experience teaches fools, however, as well as wise men; and men who have suffered the pain of the uphill clamber towards sobriety have discovered that the poison which gave the pleasure overnight can give it again to-day. So the account increases. But there is more—there is the tear and wear of increased activity. Drunkenness which has become habitual is accompanied by a loss of tone in character, which is the bloom of virtue; there is a blunting of the moral perceptions; there is a decreased sympathy with what is good and excellent; an increased selfish craving for what is unworthy and debasing. Not only are moral perceptions blunted, but the power of intellectual discrimination is much impaired. Objectless activity, such as is produced by physical stimulation, is worthless; and what is worthless in the human economy soon becomes a positive evil. The force which causes intellectual activity should be a mental, not a physical one; and under this influence the impairment of the faculties is almost certain. The habitual drunkard's ideas become more spontaneous, less under the power of control, and more fancifully arranged by the associative principle of human thought. Any exertion which requires continuous mental effort soon

becomes impossible to the inebriate, and the real healthy power of concentration is utterly lost.

§ 349. **The connection between Drunkenness and Crime.**—There is a very close connection between drunkenness and crime; indeed, it is the same craven spirit which goes to make both the drunkard and the criminal. But this relation between drunkenness and crime is particularly interesting to the student of mental disease in its legal relations, and it may be well to consider this connection in this place. We have at our disposal large and useful means of knowledge, for in February, 1872, a committee which had been appointed by the Lower House of Convocation of the Province of Canterbury, "to consider and report on the prevalence of intemperance, the evils which result therefrom, and the remedies which may be applied," produced an able report, which has since that time been printed. But, further, the late Dr. Donald Dalrymple, in his laborious but futile endeavors to bring about legislation in his country for habitual drunkards, was successful in securing the consideration of the whole subject by a select committee of the House of Commons, and was able to bring before that committee all those who were best able to speak as to the real character of this disease, as well as those who were able to devise means for the remedy of this dire and increasing evil. Both the report of the Lower House of Convocation and the report of the committee of the House of Commons contain very valuable information, and in one particular, as to the relation of drunkenness and crime, much that is not, so far as we know, to be found elsewhere. Thus, the present Lord Chief Baron, in writing to Archdeacon Sandford, who was the chairman of the Committee of the Lower House of Convocation, says: "I can only express my belief—indeed, I may say my conviction—that two-thirds of the crimes which come before the courts of law of this country are occasioned chiefly by intemperance." Mr. Justice Keating, a Judge whose wide experience and acknowledged ability give him every right to be heard on this subject, writes: "I should suppose the testimony of every Judge upon the bench would be the same as to the fact that

a very large proportion of the crimes of violence brought before us are traceable either directly or indirectly to the intemperate use of intoxicating liquors;" and finally the late Sir William Bovill, who was Chief Justice of the Court of Common Pleas, wrote: "I have no hesitation in stating that in the north of England, and in most of the large towns and manufacturing and mining districts, intemperance is directly or indirectly the cause of by far the largest proportion of the crimes that have come under my observation." If any further proof of the intimate association which exists between habits of intemperance and criminal lives, the reader might be referred to some of the evidence given before the Habitual Drunkards' Committee by some of those who are in charge of prisons in England. Thus, the governor of the prison at Kingston-upon-Hull stated that 79 per cent. of the prisoners in that prison attributed their fall to habits of drink.[1]

§ 350. **Connection between Drunkenness and certain kinds of Crime.**—The words of the Judges quoted in the last paragraph would lead the reader to suppose that drunkenness, when it led to crimes, was generally productive of crimes of violence. This might have been concluded upon other grounds than those of judicial experience. Drunkenness has, as we have seen, the effect of depriving a man of those very human qualities of control and reason, the effect of letting loose passion and lust; and the direct offspring of these is violence. But we have further seen that the drunkard is almost invariably of low moral tone: he is, after all, a man ruled by the craving of his organism rather than by the high and pure desires of his mind. When such a man is deprived of reason, what can one expect from his physical force. No habits of peace and humanity are there to rule in the interregnum between the rules of reason. When he has his reason, one vice checks another: thus, his miserliness may check his lust, his fear may limit the exhibition of his hatred; but when his cunning is asleep under the influence of stimulants, these evil tendencies are no longer reigned or governed. No wonder, then, that for the most part the crimes which are

[1] It may be well to consult Dr. Sabben's work upon "Drunkenness, Crime, and Insanity."

directly due to excessive use of intoxicants are crimes of violence. But one or two curious circumstances have been observed in relation to this subject which bear upon the question we have in hand. Thus, Sheriff Barclay of Perth has placed in the hands of Dr. Peddie, who has devoted much and intelligent attention to this subject, the notes of several interesting cases in which there was a curious uniformity in the character of the crimes from time to time committed by those who repeatedly indulged. From the year 1844 to the year 1865, one woman was committed to prison 137 times for being drunk, and when drunk her invariable practice was to smash windows. Another man, when he was drunk, stole nothing but bibles. He was an old soldier who had been wounded in the head: when drunk, the objects of his thieving propensity were always bibles, and he was transported for the seventh act of bible stealing. Then, according to Dr. Peddie, another stole nothing but spades; one woman nothing but shoes; another nothing but shawls; while a man who was brought before Sheriff Barclay and indicted for stealing a tub, was found guilty, and transported for the offence, it appearing that he had been found guilty of stealing on seven previous occssions, and that upon all of these, save one, the offence consisted of tub-stealing.[1]

§ 351. **The relation between Drunkenness and Insanity.**—The cases alluded to above would probably lead any one to surmise that there must be a close relation between drunkenness and insanity. The curious uniformity of the crimes alluded to would of itself suggest abnormal mental action which produces acts curiously out of relation to the environing circumstances of the individual who is affected, and it would seem that there was considerable incongruity in six consecutive thefts of tubs. But there is ample evidence upon this point. Thus, Dr. Skae, late medical superintendent of the Royal Edinburgh Asylum, stated to the committee of the House of Commons his belief that of the males admitted into the asylum of which he had the charge, the insanity had been brought on by drinking in 16 per cent., and

[1] See evidence of Dr. Peddie before the Habitual Drunkards' Committee.

that of the females admitted the insanity had been brought about by the same cause in 7 per cent. Dr. Crichton Browne, of the West Riding Asylum at Wakefield, when he gave evidence before the same committee, stated that having taken special means of making his inquiry exhaustive and complete, he found that of 404 cases of insanity, 58 were due to intemperaace, which gives a little over 15 per cent., and that that corresponded with the results of an inquiry which he had undertaken at the instance of Archdeacon Sandford, in which he found that 75 cases out of 500 admitted into his asylum were directly due to inebriety, which gives an average of 15 per cent. of the cases coming under his notice.[1] His conclusions were strikingly confirmed by the evidence both of Dr. Arthur Mitchell, one of the commissioners in lunacy for Scotland,[2] and by Mr. Mould, superintendent of the lunatic asylum in Cheshire. M. Lunier, too, in an instructive article, maintains that there is a striking increase of insanity in France, that that increase is an increase in the number of cases of general paralysis, and that that is due to the excessive indulgence in absinthe.[3]

§ 352. **Indirect Effects of Drunkenness upon Mental Health.**—We have not in this place so much to do with the indirect effects of intemperance upon mental health. These are, however, striking and calamitous. Many injuries to the head are received during drunkenness, and these in many cases lead to mental disease.[4] Not only does the conduct of those husbands, sons, or brothers, who indulge in this vice cause sorrow, anxiety, poverty, and distress to wives and fathers, and others whose hopes are centered and whose support depends upon this erring individual, not only does he cause misery, evil, and disease, to those who are about him, but his sins are visited upon those who come after him. The next age has to do penance for this. The children have to

[1] See Report Habitual Drunkards, p. 21, Question 447.

[2] See Report, p. 64.

[3] "Du role que jouent les boissons alcooleques dans l'augmentation du nombre de cas de Folie et de Suicide; Anales Medico-Psychologiques, 5 serie, t. vii., Mai 1872, p. 321.

[4] See article on Cranial Injuries and Mental Disease, vols. i. and ii. of the West Riding Asylum Medical Reports.

suffer because their parents sinned. It was a shrewd question that of the man who asked Christ, "Was it this man or his parents sinned, Lord, that he was born blind?" Many are born mentally blind in consequence of this debasing vice of the parents. The principle of hereditary transmission has been already sufficiently illustrated in the course of this work, but in connection with no past conduct is future suffering so strikingly displayed as in connection with habits of intemperance. In a very large number of cases, the children of drunken parents become themselves drunkards; in other cases the effects of continued intemperance are to be found in reformatories and prisons;[1] and Dr. Thompson of the Perth Penitentiary has shown that an extraordinary amount of idiocy was caused by a deterioration of the constitutions of parents which was caused by habitual intemperance, and that a large amount of epilepsy and paralysis, and other nervous and mental affects, were traceable to the same cause.[2] Dr. Peddie, in his evidence, remarked, while speaking of dipsomania: "This disease, therefore, may be acquired springing out of vicious courses, but in a large proportion of instances, I believe that habitual drunkards inherit the proclivity from drunken parents."

§ 353. **The Kinds of Drunkenness.**—It is, it seems to us, necessary to distinguish several kinds of drunkenness, and the appreciation of the distinctions which exist between each of these will go far to make the relation of drunkards to the law and to their fellow-citizens easily understood. First, there is the accidental drunkard. Any man may get drunk by accident. Children, who know little of the effects of alcoholic liquors, are apt, when these are first presented to them, to drink to excess, and it is only when the next morning's wakening comes with a head full of wonderful aches instead of wonderful dreams that the child learns that there was "death in the pot." Men may be led astray by the hilarity of some

[1] See Evidence of Mr. Henry Webster before the Habitual Drunkards' Committee.

[2] See Edinburgh Medical Journal for 1858. Dr. Howe of Massachusetts, it appears from the statement of one of the witnesses examined before Dr. Dalrymple's committee, affirms that out of 300 idiots, which came under his notice, 145 had drunken parents.

occasion, by the persuasions of friends, by physical feelings which prompt to relief by means of stimulants, and may become drunk. The various stages in an ordinary fit of drunkenness have already been described. It has been remarked with truth that in a fit of ordinary drunkenness we have an epitome of an attack of mania. And it is to be remembered that during the continuance of the influence of this poison the man is to all intents and purposes insane. It is true that the attack is only temporary, but so are many incursions of mental disease: it is true that the cause of the aberration is one which the ordinary habits of the system will counteract and remove, but that remark is equally true of many of the causes of insanity. But, second, we have regular drunkards. These get drunk when it suits them. They are sober all day, and transact their business with sense and discretion, but they get drunk regularly at night; or it may be that the indulgence of this propensity comes at rarer intervals. Still, there is a regularity to be noted in connection with these "bouts." These are really sane drunkards. They have a complete control over their passions, but they voluntarily throw the reins on its neck. They could resist temptation if they chose: they do resist temptation upon all occasions when indulgence would be inconvenient or dangerous, but on other occasions they do not care to resist. Then, third, there is a class of drinkers who scarcely deserve to be called drunkards, and who must nevertheless be regarded by those who would understand the true relation of this indulgence in liquors to pathology. This class has got the name of tipplers. Sir David Lindsay in one of his poems speaks of some who were "ever dying and never dead," and this third class might be well spoken of as "ever drinking and never drunk." But these men who soak or tipple very frequently come under the cognizance of the medical psychologist, although their names may not appear on the books that are kept at the police cells. It is much to be feared that this class is on the increase. Many men boast of being "seasoned casks," meaning thereby that they can drink a great deal without showing the symptoms of intoxication; but the boast is but little, for even these men cannot escape the consequences of their acts, and a decadence of bodily and mental health is the too common

result of their frequent indulgence. Fourth, we have habitual drunkards. As we have seen in considering the psychology of drunkenness, a single gratification of the appetite for stimulants is followed by renewed craving for the same pleasures. The urgency of this craving increases, and as time goes on the measure of such indulgences becomes more excessive and the interval between them more limited. This is not the place to discuss the large questions connected with the doctrine of the nature of volition and the freedom of the will, but no one can doubt that whether the will is only a general name for the plus quantity in ruling motives or not, that motives have a very great deal to do with the exercise of healthy volition or controlling power. But what is the result of repeated indulgences upon the motives of the man. The habit to indulge becomes stronger, the bodily craving grows in strength, and other motives lose their weight. In this way, the moral sense of the individual becomes obscured, the self-respect and the self-restraint which depend so much upon this moral estimate of one's worth are no longer guiding principles of the life: the man has become the slave of an artificial appetite, and is no longer the free ruler of his own conduct. His organism rules over him; and the rule is not that of a constitutional monarch who is ruling in conformity with the laws of health, but the tyranny of a despot who is ruling with the caprice of disease. Here, again, we find the real distinction between health and disease, and the basal principle of the legal distinction between sanity and insanity. We here pass from habitual drunkenness to dipsomania. This point was very well brought out by Dr. Crichton Browne in his evidence before the House of Commons committee which has already been referred to. "The essential distinction," he said, "appears to me to be that in habitual drunkenness the indulgence of the propensity is voluntary and may be foregone, and in dipsomania it is not so. I may mention an analogy which occurs to me. We know that self-abuse is a voluntary act: we know also that it frequently passes into what is called spermatorrhœa, which is perfectly involuntary, and so I believe that in the case of habitual drunkenness, which is at first voluntary, the vice may become involuntary and a disease. That is the only strict analogy which I know

of in medical science. The points of distinction between dipsomania and drunkenness are several. I find that as a rule dipsomaniacs urge the internal craving as an excuse: they say, "We cannot resist it." The drunkard, as a rule, urges some external excuse for his debauch: he says that he met a friend, or that it was his birthday; whereas with the dipsomaniac it is the internal craving. With the dipsomaniac, it is the *vis à tergo:* with the drunkard, it is the *vis à fronte.* The dipsomaniac is driven into the debauch by an impulse; the drunkard seeks the intoxicating effects." This seems to us to be not only a correct philosophical but physiological distinction, and it serves as a good description not only of drunkenness but of that disease of dipsomania concerning which we have already spoken.[1]

§ 354. **Mania a potu** is very often confounded with but is really to be scientifically distinguished from drunkenness. It is not in fact intoxication at all, but is the maniacal excitement which sometimes comes on as the intoxication is passing off. This form of disease is to be distinguished from delirium tremens, with which even accurate writers not unfrequently confound it. It is independent of any constitutional habit, and may occur in a person who has never drunk as a habit. The symptoms of most value in a differential diagnosis between *mania à potu* and delirium tremens are perhaps these, that while the former continues from one to two months, the latter terminates in about eight days. The delusions characteristic of the one disease are also found in connection with the other.

§ 355. **Delirium tremens** is a disease which owes its origin to constitutional habit. It is a disease of the habitual drunkard. It is, however, also the portion of that class of drinkers whom we have designated tipplers. Abstinence from indulgence in stimulants is not unfrequently the proximate cause of this disease, but an exhausting disease or a severe injury following upon a long course of intemperance, has been found to lead directly to an attack of delirium tremens.

[1] See ante p. 325, § 215.

[250]There is not much difficulty in distinguishing the delirium of drunkards from ordinary delirium. The previous history of the case is generally sufficient of itself to enable a medical man to decide the question; but there are many characteristic symptoms which would facilitate a decision even if the past history was unknown. An individual suffering from delirium tremens is sleepless, restless, timid, suspicious, and cunning. He is subject to illusions of the senses, and those in most cases are productive of fear. Most of his illusions are painful, hideous, or disgusting. The individual not unfrequently believes himself the subject of persecution. If he hears voices they are threatening, if he sees visions they are loathsome. In its inception the disease is marked by slight tremor of the hands, and in so far as these organs are concerned, by an uncertainty of muscular action. The appetite is almost always impaired; the skin is pale, cold, and clammy; the tongue moist, white, and tremulous, and the pulse small and weak; the delirium which supervenes is not constant. It is frequently found to come on at night. After a time, however, there are no remissions in the delirium, which may last for three or four days. Recovery, when it takes place, comes after sleep, which is at first uneasy, and only enjoyed in snatches, but at length becomes quiet and refreshing. When ordinary sleep does not come, a sounder sleep falls upon the sufferer: there is no more troubling, the weary one is at rest.

§ 356. **Nature of Delusions in Delirium Tremens.**—It has been remarked that the delirium of this disease bears a strong resemblance to dreaming. It is as if the patient's dreams had acquired a persistent existence independently of sleep. Every one is familiar with those dreams which are quests—dreams in which the sleeper is seeking for something that is lost—always seeking, seeking, and yet unable to say what it is that is sought; or dreams in which there is some duty to be performed—some act which is absolutely incumbent to be done. Those are tormenting dreams: they harass the spirit just as a waking memory of some other lost memory does. In delirium tremens many of the impressions are of a nature analogous to these dreams. The patient is anxious

[251] to go somewhere: he must rise: he cannot stay in bed, he will be too late: it is unkind to say "lie still," he must go—or something must be done; and he will cry if his intention is thwarted, although it is a purposeless intention—a road without a goal. Almost invariably his delusions are associated with fear and suspicion. Those persons who are about him are suspected of many nefarious designs, and so painfully does the fear of coming evil oppress him that attempts to escape are not uncommon, and the patient, with a view of ridding himself of the horrors which torment his senses, and the unutterable fear which torments his mind, will endeavor to do violence to himself or others. Many cases are on record which show that atrocious crimes have been committed by persons laboring under this disease.[1]

§ 357. **The Pathology of Drunkenness.**—It cannot be doubted that the habitual drunkard suffers from actual cerebral disease, that drunkenness after frequent repetition, from the increased action of the brain, degenerates first into constant irritation, and afterwards into real inflammation, that the coats of the vessels are thickened and lose their transparency, that the cerebral texture has diminished delicacy and elasticity, and that slight effusions of water are by no means uncommon: it might be predicted that responsibility would also be diminished with the diminution of all the functions of a healthy brain. Such pathological changes cannot take place without a corresponding change in the mental capacity; and therefore it is of the utmost importance that medical men and jurists, who may have to do with cases of responsibility, should appreciate the influence which drunkenness either in itself or in its deleterious effects upon brain-substance may exercise upon the mental health, and therefore the citizen-capacity and citizen-responsibility of the individual.

§ 358. **The Periodicity of Drunkenness.**—[253] The periodicity of inebriety is a somewhat remarkable characteristic.

[1] Reg. *v.* Simpson, Appleby Summer Ass. 1845; Reg. *v.* Watson, York Winter Ass. 1845. See further, as to delirium tremens, Practical Notes by Professor Laycock, Edinburgh Medical Journal, Nov. 1862.

Some weight has been laid upon this circumstance as proving the similarity of the pathological conditions in cases of drunkenness arising from voluntary indulgence and passing into habitual excesses, and the moral mania of drunkenness. Such an inference seems warranted upon other grounds, and seems scarcely to follow directly from the mere fact of periodicity. Periods seem a somewhat basal arrangement of nature. Everything tends to become periodic. The whole progress through time of animal economy is marked by periodic changes and reversions; and when we find that this is the case, it is easy to conceive that any grafted habit should follow to a certain extent in its mode of existence the tendencies of that upon which it is grafted. Hence the periodical character of drunkenness. Even volition, which seems to be independent of conditions, becomes periodic. Habit is always busy making rust in the locks of character which are not used. Cases have come under our own observation which prove this fact. Many individuals, with the circumstances of whose cases we are familiar, seem strong to do right—seem capable of resisting any temptation, however safely the indulgence might be enjoyed, and who, after some months of this virtuous abstinence, have again returned to the old habit, have again become possessed by the Devil, which was not dead but sleeping. We find this same law exemplified in the action of the normal appetites. When hunger has been allayed, a man is disgusted at the sight of food. When lust is satisfied, a man is very virtuous. So it is sometimes in this vice of drunkenness, which has passed from the ante-room, vice, into actual disease, the Devil's inner chamber. Was it not the Devil and sin brought death? These circumstances may serve to explain to some extent the periodicity of habits of intemperance.

§ 359. **Conditions which conduce to Inebriety.**—[254]There is much truth in Montesquieu's remark, that the error of drinking to excess depends much upon the climate and temperature of the country of the persons who indulge. While some Highland drovers can drink a whole bottle of whiskey without evil effects, the same quantity of stimulants taken by an individual in a warmer and more relaxing climate

would cause dangerous intoxication. The habits and occupations of the individual have much to do with the amount of influence alcohol obtains over the system. So that when Montesquieu says, "A German drinks through custom, founded upon constitutional necessity; a Spaniard drinks through choice, or out of the mere wantonness of luxury; and drunkenness," he adds, "ought to be more severely punished where it makes men mischievous and mad, as in Spain and Italy, than where it only renders them stupid and heavy, as in Germany and more northern countries,"[1] he made an excellent remark. This remark of Montesquieu's with regard to punishment leads us naturally to the difficult and important question of the relation of drunkenness to law. Enough has, it seems to us, been said with regard to the nature of this disease—and we use the word disease in its widest sense—to make the principles which the law has laid down with reference to the capacity and responsibility of those who either directly by their voluntary act make themselves drunk, or who in consequence of long habits of intemperance go insane, easily understood by the reader, and we cannot but think that the prudence and wisdom of these rules will be appreciated by all. One important question will also be touched on in the following chapter, and that is as to the expediency of restrictive measures in relation to habitual drunkenness.

§ 360. **Connection between Drunkenness and Insanity.**—Perhaps enough has been said concerning the relation which exists between the vice of drunkenness and disease, but it may be interesting to quote the opinion of a psychological authority upon this subject which illustrates in variety some of the points already alluded to. "That intoxication," says Greisinger, "when carried to a certain degree, as a dreamy condition with numerous hallucinations and illusions, really resembles insanity, is easily understood. Sometimes we see individuals who, after partaking of a relatively small quantity of spirits, and without being in a state of deep intoxication, but retaining fully their consciousness, present a

[1] Spirit of Laws, B. xiv., c. 10.

great tendency to commit very extravagant, noisy, and foolish acts; a circumstance which may be truly considered as a symptom of predisposition to mental disease. Moreover, there occur in drunkards sudden convulsive states which resemble epileptic attacks, and which are sometimes followed by a condition of forgetfulness and tranquil delirium; at other times by outbreaks of furious delirium, which has been termed the convulsive form of intoxication. The habitual drunkard, in whom the habit is already far advanced, presents also, even when he is not in a state of intoxication, many signs which indicate the existence of an advancing chronic disease of the brain, and which make him closely resemble the mentally diseased. Indeed, this condition may gradually pass into insanity, and particularly into dementia; and these are constantly found in the brains of habitual drunkards, as in many of the insane, the results of passive congestion, chronic opacities, and thickening of the cerebral membranes. The appetite acquired by habit is so powerful in the drunkard, the ideas which might oppose it are so weak, and the will has become so paralyzed, that he, even though he is aware that he renders himself despised and contemptible, undermines his constitution, disturbs his domestic happiness, ruins his business, and every day postpones the good resolution which he perhaps has made. The craving, the dizziness, the dullness of the senses, the muscular feebleness, the stomach complaints from which he suffers, are, each time he partakes, alleviated for the moment, and it may, perhaps, be partly owing to the fact that these disorders require each day to be remedied that drunkenness is often so inveterate."[1]

[1] Mental Pathology, Syden. Soc. ed. 1867, § 100.

CHAPTER XVII.

THE LEGAL RELATIONS OF DRUNKENNESS.

§ 361. **Drunkenness as affecting Civil Capacity.**—After what has been said in the last chapter concerning the direct physical and mental effects of intoxication, it cannot be surprising to any one that the law should deprive a man who is drunk of civil capacity. The freedom of contract is only a rational doctrine in relation to freedom of will, and when drunkenness is complete, there is no such thing as volition existing. When, however, a man is dead-drunk, to use an ordinary and expressive phrase, little question can be raised as to his capacity to affect his property by contract or by will, but there are, as we have seen, many stages of drunkenness before that final stage of muddled oblivion during which a man might transact business, and yet be in such a bodily and mental condition as to be unable to give a sane or rational consent. Such men have to be protected as much against the fraud of others as against themselves. But the law has done well to say that a moderate degree of drunkenness will not be sufficient to invalidate a deed or agreement, and courts of equity have refused relief to those who sought to void contracts on the ground that they were partially intoxicated at the time they were entered into, unless the drunkenness was contrived by the other party as a means to securing an undue advantage.[1] The reason for this rule of law is very obvious, for the fact that a contract has been entered into, gives a presumption that the parties were in a condition to consent. If, however, that presumption is rebutted, and it appears that the person was in a state of complete intoxica-

[1] Story Equity Jurisprudence, § 232; Jardine *v.* Elliot, Hume, 684; Hunter *v.* Stevenson, Hume's Decisions, 686; and see Hayes *v.* Huffstatter, 65 Barb. 530.

tion, the law will hold that he was incompetent either to enter into a contract or to make a will.[1] This principle is laid down by Pothier, who says: "Drunkenness, when it goes so far as absolutely to destroy the reason, renders a person, so long as it continues, incapable of contracting, since it renders him incapable of consent."[2] Although it was at one time held that intoxication afforded no ground for the repudiation of a contract entered into during its continuance;[3] it cannot now be doubted that [257] the doctrine, that a person who has contracted, even by deed, whilst intoxicated to the extent of being no longer under the guidance of reason, and of being incapable of judging of the consequences of his act, may successfully dispute his liability in respect of such a transaction, is established.[4] So by the law of Scotland drunkenness will be a ground for setting aside a marriage entered into by a party in a state of intoxication.[5] There has been a distinction drawn between *express* and *implied* contracts in so far as the capacity to contract during a period of intoxication is concerned. When the right of action, it has been said,[6] is founded upon a specific distinct contract requiring the assent of both parties, and one is so drunk as not to be able to assent, there can be no binding contract, "but in many cases the law does not require an actual agreement between the parties, but implies a contract from the circumstances; in fact, the law itself makes the contract for the parties. Thus, in actions for money had and received to the plaintiff's use, or money paid by him to the defendant's use, the action may lie against the defendant even though he may have protested against such a contract."

§ 362. **Liability of a Drunken Person.**—The law does not allow a man to get advantage from his own wrong, and it will not allow a person who has been drunk to use that vice

[1] Menkins *v.* Lightner, 18 Ill. 283.

[2] Obligations N. 49. See Sentance *v.* Poole, 3 Car. & P. 1.

[3] Beverley's Case, 4 Rep. 125 a.

[4] Gore *v.* Gibson, 13 Mees. & W. 623; per Sir. W. Grant, M. R. Cooke *v.* Clayworth, 18 Ves. 15, 16, followed by Sir E. Sugden in Nagle *v.* Baylor, 3 Dr. & War. 64 and 65; Shaw *v.* Thackray, 17 Jur. 1045.

[5] Erskine's Principles, Smith's edition, p. 109; Johnstone, 2 S. 495.

[6] Per Pollock, C.B., 13 Mees. & W. 625–6.

as a means of cheating his neighbors. Thus, a tradesman who supplies a drunken man with necessaries is entitled to recover the price of them if they are retained by the party after the intoxication has passed away.[1] The principles of the law in this connection are stated by Vice Chancellor Stuart in Shaw *v.* Thackray.[2] "The principles acted upon," he said, "in Cook *v.* Clayworth,[3] were that a party being in liquor when he entered into an agreement was no reason for the Court to refuse a decree for specific performance, and they pointed out the rule to be acted on in these cases. In Cory *v.* Cory, and subsequently in Nagle *v.* Baylor,[4] the same rule had been acted upon. The course of the Court had been in cases of this kind, that it would not assist a person who had obtained or who wished to get rid of an agreement or deed on the mere ground of intoxication; but only where any contrivance was used to draw him in to drink, or any unfair advantage taken of his situation, or in that extreme state of intoxication which deprived a man of his reason, did the Court interfere." It is to be remembered that there is a strong presumption of fraud in the case where a person has taken an obligation from a person who was intoxicated and known to be intoxicated at the time of the transaction.[5]

§ 363. **Effect of Drunkenness upon Deed.**—The fact that drunkenness does not void a deed absolutely, but renders it voidable,[6] has sometimes been overlooked. Thus it has been held that when a person makes a deed during such a state of drunkenness that he would be entitled to repudiate it, he may ratify it when sober, whereby the necessary element of consent is suplied, and in that way bind himself and his personal representatives.[7]

[1] Per Alderson, B., in Gore *v.* Gibson, 13 Mees. & W. 623. See also Willoughby *v.* Moulton, 47 N. H. 204.

[2] 17 Jur. 1045.

[3] 13 Ves. 12.

[4] 3 Dr. & W. 64.

[5] Levy *v.* Baker, Moo. & M. 106; 13 Mees. & W. 126. See Sentance *v.* Poole, 3 Car. & P. 1. See also Story, ss. 230, 231, 233.

[6] See Barrett *v.* Buxton, 2 Aiken, 167.

[7] Eaton's Admrs. *v.* Perry, 29 Mo. 96; Willoughby *v.* Moulton, 47 N. H. 204. See as to the effect of drunkenness on contracts, Ersk. iii., 1, 16; Stair, 11, 3; L. Haltoun *v.* Northesk, 1672, 16 Morrison's Decis. 13, 384. See also Gore *v.* Gibson, 10 Mees. & W. 623; Cole *v.* Robins, Bull, N. P. 172 a; Pitt *v.* Smith, 3 Camp. 33; Fenton *v.* Holloway, 1 Stark, 126; Hamilton *v.* Grainger, 5 Hurl. & N. 40.

§ 364. **Drunken Person Liable for Torts.**—It is a well known principle of law that to the constitution of a right of action for a bodily injury, whether direct or consequential, the existence of an evil intention in the mind of the wrong-doer is not essential,[1] and hence the law has held that an infant[2] or a lunatic[3] shall be answerable for his torts, although wholly incapable of design. It follows therefore that drunkenness, which is a defence only in that it reduces a sane man to the condition of a child or a madman, will be no defence in an action founded on tort.[4] Indeed, drunkenness may, in a certain way, be introduced into the case as an aggravating circumstance when the question as to whether due care had been taken to avoid the accident out of which the action arose, is material. Thus, in an action which was brought for injury caused to the plaintiff by the negligent driving of a sleigh, an American Judge, Gibson, C. J., said: "The evidence of intoxication ought to have been received, not because the legal consequences of a drunken man's acts are different from those of a sober man's acts, but because, where the evidence of negligence is nearly balanced, the fact of drunkenness might turn the scale, inasmuch as a man partially bereft of his faculties would be less observant than if he were sober, and less regardful of the safety of others. For this purpose, but certainly not to inflame the damages, the evidence ought to be admitted."[5] It has been decided that drunkenness is not an excuse for slander.[6]

§ 365. **Effect of Drunkenness on Testamentary Capacity.**—We have already mentioned incidently that intoxication when carried to such extent as to produce mental oblivion, deprives the party, during the continuance of that state, of the ability to execute a valid will.[7] The general

[1] Lambert *v.* Bessey, T. Raym. 422; Gibbon *v.* Pepper, Salk. 637; Scott *v.* Shepherd, 2 W. Black. 864.

[2] Per Lord Kenyon, C. J., 8 T. R. 337; Hodsman *v.* Grissel, Noy, 129; Co. Litt. 180 b. n.; Johnson *v.* Pie, 1 Lev. 109.

[3] Weaver *v.* Ward, Hobart, 138; Brown's Com., p. 675. See also Morse *v.* Crawford, 17 Vt. 499.

[4] Co. Litt. 247 (a); 4 Bl. Com. 25.

[5] Wynne *v.* Allard, 5 Watts & S. 525. See also Reed *v.* Harper, 25 Iowa, 87.

[6] Reed *v.* Harper, 25 Iowa. 87.

[7] Swinb. pt. 2, sec. 6. "He that is overcome with drink, during the time of his

rule of law with reference to wills is that where there is no appearance of artifice in procuring the will, and it is reasonable in itself, it shall stand, and the law as applicable to drunkenness and testamentary capacity is, as might have been expected, very similar to that which we have already discussed in connection with contracts. In one case, it was said that drunkenness in the testator of itself is no legal exception to the validity of a will, but where from habitual intoxication a man's senses are besotted and his understanding gone, he could make no will.[1] But, as we have seen, this doctrine is open to some question, and the better opinion would seem to be that if the drunkenness was so profound as to deprive the individual of a disposing mind, it would invalidate any will executed during the continuance of such incapacity just as much as the mental disease which is the result of a long course of habitual indulgence. But it is the fact that drunkenness does not of itself[2] imply the invalidity of the will, for, as we have seen, there are various degrees of drunkenness, and these produce various degrees of capacity, and the law has said that all men with the capacity to make wills may do so; and has not said, only men of a certain capacity shall be at liberty to exercise this privilege. But as the delirium of drunkenness is short-lived, there is no legal presumption of the continuance of this incapacity, and even a person who is addicted to the frequent and injurious use of ardent spirits may execute a perfectly valid will, if that will is the result of his free choice, influenced only by reason and affection, and uninfluenced by poison or disease.[3] In this then there is a distinction, in so far as law is con-

drunkenness, is compared to a madman, and therefore if he make his testament at that time, it is void in law. Which is to be understood when he is so excessively drunk that he is utterly deprived of the use of reason and understanding. Otherwise, if he is not clean spent, albeit his understanding is obscured and his memory troubled, yet he may make his testament, being in that case." Ayrey *v.* Hill, 2 Add. 206; Billinghurst *v.* Vickers, 1 Phillim. 191; Wheeler *v.* Alderson, 3 Hagg. 574.

[1] Starret *v.* Douglass, 2 Yates, 48. "Drunkenness is itself a species of insanity, and might invalidate a will made during a drunken fit," remarked Harrington, J., in Duffield *v.* Morria' Exr., 2 Harr. 383.

[2] Hight *v.* Wilson, 1 Dallas, 94; Gardner *v.* Gardner, 22 Wend. 526. See also Shelf. on Lunatics, 274, 304.

[3] See Temple *v.* Temple, 1 Hen. & Munf. 476. See also Black *v.* Ellis, 3 Hill, 68; Harper's Will, 4 Bibb, 244; McSorley *v.* McSorley, 2 Bradf. Sur. 188. See also Shelf. on Lunacy, 276.

cerned, between drunkenness and insanity, a distinction which is well brought out by Sir John Nicholl. In the case of insanity, the disease may be latent, but in that of drunkenness, if it is to affect the will at all, it must be actual, it must manifest itself in excitement, and excitement in such a degree as to vitiate the act done; "for I suppose," he remarked, "I suppose it will be readily conceded that under a mere slight degree of that excitement the memory and the understanding may be in substance as correct as in the total absence of any exciting cause. Whether, where the excitement in some degree is proved to have actually subsisted at the time of the act done, it did or did not subsist in the requisite degree to vitiate the act done, must depend in each case upon *due* consideration of all the circumstances of that case in particular; it belonging to a description of cases that admits of no more definite rule applicable to the determination of them than the one I have suggested, that I am aware of."[1]

§ 366. **The Burden of Proof.**—Where drunkenness is relied upon as evidence of a want of testamentary capacity, the burden of proof of its existence is upon those who desire to invalidate the will.[2] In a *nisi prius* case which was tried before Lord Campbell, the will was impeached on the ground that the testator's mind was impaired by drinking, and that he was under the undue influence of the devisee or his family. It appeared that the testator had been addicted to drinking, and had had delirium tremens a few days before the will was executed, and that the will was drawn up by the son of the devisee at his house, he being an old friend of the testator. It was held that the question was whether the testator was sane and sensible and able to understand the nature and contents of his will at the time it was executed, and that if the testator had really requested the son of the devisee to draw up the will, and it was his voluntary and spontaneous act, not under constraint and free from force or fraud and from imposition and importunity, there was no undue influ-

[1] Jarman on Wills, p 54. See Cory *v.* Cory, 1 Ves., Sen. 19.
[2] Andress *v.* Weller & Miller, 2 Green Ch. 604.

ence, and the will was valid.[1] In a case which came before the New York Court of Appeals, and which is referred to in Dr. Redfield's work on the Law of Wills,[2] it was held that neither intoxication nor the actual stimulus of intoxicating spirits at the time of executing the will, incapacitates the testator, unless the excitement be such as to disorder his faculties and pervert his judgment. It was further held that the dispositions of the will may be considered for the purpose of determining the testator's condition at the time of executing it. But in order to defeat the will upon this ground alone, such dispositions must not only be in some degree unreasonable and extravagant, but they must depart so far from what would be regarded as natural as to appear fairly referable to no other cause but a disordered intellect. The will of a confirmed drunkard, although executed after a protracted debauch, and although the testator had drunk several times during the day, at the time of executing it, was confirmed.[3]

§ 367. **Incapacity produced by Medicines.**—It has been held that mental incapacity on the part of the testator, when produced by the use of medicines, is sufficient to invalidate a will.[4] This was a very obvious and necessary deduction from the principles which have been dwelt upon above. It is the actual condition of the mind, of the mental capacity, the actual sentient relation of the testator to the circumstances of his life and to the claims which affection, blood, or service may have upon his remembrance and generosity, that is the gauge of his competency to make a valid will. The cause of this is important to the medical man who would treat the disease, but it is unimportant to the judicial tribunal which has to decide upon the validity or invalidity of a will. It therefore matters very little how the absence of the sense which is required for testamentary capacity was produced, whether by the voluntary act of the person who made the will, or by the course of treatment which was prescribed by his physician.

[1] Handley *v.* Stacey, 1 F. & F. 574. [2] 3d ed., * 163.
[3] Peck *v.* Carey, 27 N. Y. 9.
[4] Stedham *v.* Stedham, 32 Ala. 525.

§ 368. **Drunkenness as affecting Responsibility.**—We come now to the consideration of an important question in relation to intemperance, and that is, how far drunkenness affects the responsibility of those who commit crimes during the time that they are under the influence of intoxicants. The old law on the subject, as embodied in the words of Sir Edward Coke, is well known: "A man who is *voluntarias dæmon* hath no privilege thereby, but what ill soever he doth, his drunkenness doth aggravate it."[1] After what has been said in relation to torts, this rule of criminal law will be regarded as reasonable enough, for in one aspect a crime may be looked upon as a tort affecting the community at large, instead of a private individual. A similar rule existed in Greece, where, according to Puffendorf, "the law of Pittacus enacted, that he who committed a crime when drunk should receive a double punishment—one for the crime itself, and the other for the inebriety which prompted him to commit it."[2] This law has also been laid down repeatedly by English Judges. Thus, Parke, B., said: "If a man voluntarily makes himself drunk, that is no excuse for any crime he may commit whilst in that state: he must take the consequences of his own act, for many crimes would otherwise go unpunished."[3] So Alderson, B., observed that: "If a man chooses to get drunk, it is his own voluntary act: it is very different from madness which is not caused by the act of the person. That voluntary species of madness which it is in a party's power to abstain from he must answer for."[4] This law, like most of the good law which has been enunciated by English Judges, has been adopted in American Courts of law, and we find Story, J., remarking that although insanity, as a general rule, produces irresponsibility, "an exception is, when the crime is com-

[1] Co. Litt. 247 a.

[2] Puffendorff's Law B. viii., c. 3. The Roman law, on the other hand, admitted drunkenness as an excuse for crime. §§ 46, 16, 6.

[3] Rex *v.* Thomas, 7 C. & P. 820; 4 Stevens' Com., p. 113. See also 1 Hale, 7, where Lord Hale, speaking of drunkenness, remarked: "This vice doth deprive a man of his reason, and puts many men into a perfect or temporary frenzy; but by the laws of England such a person shall have no privileges by his voluntary contracted madness, but shall have the same judgment as if he were in his right senses." The law of Scotland has recognized the same principle. See Erskine's Principles, p. 730.

[4] Reg. *v.* Meakin, 7 Car. & P. 297. See 1 Russell on Crimes, 8. See also Burrow's Case, 1 Lewin C. C. 75; Rennie's Case, 1 Lewin C. C. 76.

mitted by a party while in a fit of intoxication, the law allowing not a man to avail himself of the excuse of his own gross vice and misconduct to shelter himself from the legal consequences of such crime."[1] This doctrine has been reäffirmed repeatedly since. It has been definitely settled that voluntary drunkenness that merely excites the passions and stimulates men to the commission of crimes, in a case of homicide by one in such a condition without any provocation, neither excuses the offence nor mitigates the punishment.[2]

§ 369. **Drunkenness as affecting Intention or Malice.**— Here, however, we see a new element introduced into the consideration of this question. Although voluntary drunkenness does not excuse but rather aggravates the crime, may not the fact that the man was drunk at the time the crime was committed bear very materially on the question as to the intention and malice? May not drunkenness be considered in connection with the question of provocation? These are, in a medico-legal point of view, most important questions, and merely upon the grounds of justice and common sense one would be inclined to answer both in the affirmative. Luckily, however, there are guiding decisions which leave no room for doubt.[3] Thus a case, already referred to, decided that although drunkenness is no excuse for any crime a drunken man may commit, still where provocation by a blow has been given to a person who kills another with a weapon which he happens to have in his hand, the drunkenness of the prisoner may be considered on the question whether he was excited by passion or actuated by malice; and it was further held that it may be considered on the question whether expressions used by the prisoner manitested a deliberate purpose, or were merely the idle expressions of a drunken man.[4] In

[1] See also People *v.* Lewis, 36 Cal. 531; State *v.* Cross, 27 Mo. 332; McIntyre *v.* People, 38 Ill. 514; People *v.* Garbutt, 17 Mich. 19; U. S. *v.* Clarke, 2 Cranch C. C. R. 158; U. S. *v.* McGlue, 1 Curtis, 1; Cornwell *v.* State, Mar. & Yer. 147; Kelley *v.* State, 3 Smedes & Mar. 518; Pirtle *v.* State, 9 Hump. 663; State *v.* John, 8 Ired. 330; Schaller *v.* State, 14 Mo. 502. See also Wharton's Criminal Law, § 40; Rogers' Case, 7 Metc. 500; Friery *v.* People, 54 Barbour, 319.

[2] Shannahan *v.* Commonwealth, 8 Bush (Ky.) 464.

[3] Rex *v.* Grindley, Worcester Sum. Ass. 1819, 1 Russell on Crimes, 12.

[4] Rex *v.* Thomas, 7 Car. & P. 817.

another case, it was expressly decided that it was proper that the jury should take the fact of drunkenness into consideration when considering the motive or intent of a person acting under its influence.[1] So where, on the trial of an indictment for an attempt to commit suicide, it appeared that the prisoner was at the time of the alleged offence so drunk that she did not know what she did, it was held that this negatived the attempt to commit suicide.[2] So in Rex *v.* Meakin,[3] it was decided that in a stabbing case, where the person has used a deadly weapon, the fact that he was drunk does not at all alter the nature of the case; but if he had intemperately used an instrument not in its nature deadly when he was drunk, the fact of his being drunk might be evidence to induce the jury less strongly to infer a malicious intent at the time. There Alderson, B., said: "It is my duty to tell you that the person being intoxicated does not alter the nature of the offence. If a man chose to get drunk, it is his own voluntary act: it is very different from madness which is not caused by any act of the person. That voluntary species of madness which it is in the party's power to abstain from, he must answer for. However, with regard to the intention, drunkenness may perhaps be adverted to according to the nature of the instrument used. If a man uses a stick, you would not infer a malicious intent against him, if drunk when he made an intemperate use of it, as you would if he had used a different kind of weapon; but where a dangerous instrument is used, which, if used must produce grievous bodily harm, drunkenness can have no effect on the consideration of the malicious intent of the party." Here, again, American law has wisely followed the English rule. Thus it has been held that where a statute makes an offence to consist of an act committed with a particular intent, the rule that voluntary intoxication does not excuse acts which constitute an offence, includes only the consequences which do actually follow the crime actually committed, and not the intent charged, if the defendant was at the time incapable of entertaining it, and did not in fact en-

[1] Reg. *v.* Gamlen, 1 Foster & F. 90.

[2] Reg. *v.* Moore, 3 C. & K. 319; 16 Jur. 750.

[3] 7 Car. & P. 297. See also Reg. *v.* Crure, 8 Car. & P. 546. See also Law Times, 27th Sept. 1845, p. 542.

tertain it.[1] And again, in another case, where the rule that intoxication is an aggravation of, rather than an excuse for, crime was admitted; and where it was held that, short of destroying reason altogether, it was not in any case a full defence, the principle that where drunkenness is so great as to render it impossible for a man to form any complete design, the law allows it to reduce the grade of homicide from murder of the first degree to murder of the second. But in that case the burden of proof is on the prisoner.[2]

§ 370. **Responsibility of Persons whose Drunkenness is Involuntary.**—If the person who commits a crime under the influence of drunkenness is not in a condition of voluntary intoxication, if his helpless or insane condition is due to the fraud of others, then he will of course be looked upon as irresponsible in the eye of the law. A very nice question arises in this place. We will in the following paragraphs have to consider the responsibility of those persons who have become insane through the long-continued use of intoxicating liquors, and we shall see that the law holds these upon good and sufficient grounds to be irresponsible. But there is a class between those who are insane through habit and those who get voluntarily drunk, the legal relations of which it is important to determine. It is, as we have seen, well known [253] that there are cases where, owing to some physical injury done to the head of an individual, a very small amount of stimulation will produce drunkenness, and drunkenness will lead to a fit of temporary insanity. The law of England makes no distinction between an act committed by an individual affected in this way and the act of an ordinary drunkard. But what is law is not always right. It is evident that if through some bodily infirmity a man, under the influence of a small quantity of stimulants, becomes insane, any act he may commit during such temporary insanity is partly due to the infirmity as well as to the voluntary act by which he submitted

[1] Roberts v. People, 19 Mich. 401; also, Reg. v. Cruse, 8 Car. & P. 541. See also Pirtle v. State, 9 Hamp. 663; Nichols v. State, 8 Ohio St. 435; People v. Harris, 29 Cal. 678; Curry v. Com. 2 Bush (Ky.) 67; Rex v. Grindley, Worcester Sum. Ass. 1819; 1 Russell Crimes, p. 12.

[2] Commonwealth v. Hart, 2 Brews. Pa. 546. See Pigman v. State, 14 Ohio, 555.

himself to the influence of the intoxicating liquors. It may be argued that the man might have refrained, and that if distinction was to be drawn between his and any ordinary case of drunkenness there could be no reason for not taking the capacity of each individual to take stimulants into consideration in every case—that as it is a fact that men can upon one occasion drink with impunity what upon another occasion would produce drunkenness, a man might be recognized as irresponsible to-day for an act which, if committed yesterday, would have been criminal. [256]But it is not upon such grounds that a distinction should be drawn. It would unquestionably be absurd to say that any act committed by a man who got drunk after drinking, in his estimation, moderately—or drinking such a quantity as he had repeatedly imbibed without any loss of voluntary power—should be regarded as irresponsible for the criminal acts which might ensue. It is true that such fine distinctions are out of place in law, but it is also true that the law might recognize the fact that there is in almost all those cases in which temporary insanity follows upon the use of stimulants in those who have suffered from some cranial injury or diminution of the power of self-control, a loss of the capacity to judge accurately concerning acts and their consequences. So that in such a case a man does not "voluntarily make himself drunk," and if he suffers punishment for the act committed during such mental aberration he no more "takes the consequences of his own acts" than a horse which is whipped because it carried a man to a place where he stole does. Since the above was written we find that this principle has been recognized in America, where it has been held that if a person be subject to a tendency to insanity which is liable to be excited by intoxication, of which he is ignorant, having no reason, from his past experience or from information derived from others, to believe that such extraordinary effects are likely to result from intoxication, he ought not to be held responsible for such extraordinary effects, and so far as the jury believe that his actions resulted from these, and not from the natural effects of the drunkenness or from previously formed intentions, the same degree of competency should be required to render him capable of entertaining or responsible for the intent as where

the question is one of insanity alone.[1] We cannot but think that this is a reasonable rule, and that it will recommend itself in time to the judicial mind in England. In Scotland, this principle has been recognized; and Alison, in his Principles of the Criminal Law of Scotland,[2] says: "If, however, either the insanity has supervened from drinking without the panel's having been aware that such indulgence in his case leads to such a consequence; or if it has arisen from the combination of drinking with a half crazy or infirm state of mind, or a previous wound or illness which rendered spirits fatal to his intellect to a degree unusual in other men, or which could not have been anticipated, it seems inhuman to visit him with the extreme punishment which was suitable in other cases. In such a case, the proper course is to convict, but in consideration of the degree of infirmity proved, to recommend to the royal mercy."[3]

§ 371. **The Responsibility of those whose Insanity is Caused by Drunkenness.**—We have seen that voluntary drunkenness is no excuse for crime, and we have seen that the principle of this tenet is that when a man with his eyes open puts himself in a position in which he may do harm to others, he ought to be regarded as responsible for the harm done; that although the act may be involuntary, the condition in which volition was impossible was brought about by the voluntary act of the individual, and that it must be regarded as responsible not only for the first act of a series, but for all those which necessarily and directly follow. This rule is, as we have seen, founded upon the truest principles of law. But another question follows, Does a man contemplate remote possibilities in his acts, or only proximate probabilities? If he contemplates only the latter, it would be wrong to make

[1] Roberts *v.* People, 19 Mich. 401

[2] P. 654.

[3] See the case of Thompson, Shaw, 129, in which counsel for the prisoner proposed that he should uncover his head in order that the jury might see the mark which was said to have been occasioned by the injury in America (he was liable to derangement, especially after drink, and more so since the injury.) This question was not allowed, because the existence of the mark prior to the time of the offence was not proved. This ruling, however, allows the inference that if its priority had been proved, the question would have been admissible.

him responsible for the former. Therefore, it is held by law that when incapacitating disease is the result of long-continued, voluntary excesses, it would be impolitic to hold an individual thus affected as responsible for the acts which he might commit under the influence of this disease. It would, it seems to us, [252] be utterly absurd for the law to hold that a man was responsible for any act committed by him during a period of incapacity if that incapacity was produced by a voluntary act, however far the cause and the effect were dissociated as regards time. If such were the law, it would be impossible to make out real irresponsibility, for it would amount, in many cases, to an impossibility to determine the question as to whether any ordinary mental disease was caused by the acts of the individual or by the inexorable circumstances of an evironment in space and time which fate determines. We would go too far to endeavor to trace the fault of rendering oneself incapable to such a remote past, because it is only fair to hold a man responsible for consequences which an ordinary understanding could recognize as likely to follow from immediate acts. True, to the wise man evil must arise in time to come from any unvirtuous action in the present. But the laws were not framed with reference to wise men, but mostly with a careful regard to fools. So it would be anything but just to regard the volitional element in the inception of a series of events as giving a character of criminality to any subsequent act which happened to be against the law, for it is evident that the cerebral conditions may become in time an efficient cause of the act without the intervention of will, and even in spite of the very strongest motives which would lead in an ordinary individual to abstinence from the act in question. There are prejudices in men's flesh.

§ 372. **Drunkenness Remote Cause of Insanity: Responsibility.**—This subject was ably treated by Story, J., in the case of Alexander Drew.[1] "The question made at bar," he said, "is whether insanity, whose remote cause is habitual drunkenness, is or is not an excuse in a court of law for a homicide committed by a party while so insane, but not at

[1] 3 American Jurist, 7; 5 Mason, 28.

the time intoxicated or under the influence of liquor. We are clearly of opinion that insanity is a competent excuse in such a case. In general, insanity is an excuse for any crime, because the party has not the possession of his reason which includes responsibility. An exception is where the crime is committed when the party is in a fit of intoxication, and while it lasts; and not, as in this case, a remote consequence superinduced by the antecedent exhaustion of the party arising from gross and habitual drunkenness. However criminal in a moral point of view such an indulgence is, and however justly a party may be responsible for his acts arising from it to Almightly God, human tribunals are generally restricted from punishing them, since they are not the acts of a reasonable being. Had the crime been committed when Drew was in a fit of intoxication, he would have been liable to be convicted of murder. As he was not then intoxicated, but merely insane from an abstinence from liquor, he cannot be pronounced guilty of the offence. The law looks to the immediate and not to the remote cause, to the actual state of the party and not to the cause which remotely produced it. Many species of insanity arise remotely from what in a moral point of view is a criminal neglect or fault of the party; as from religious melancholy, undue exposure, extravagant pride, ambition, etc. Yet such insanity has always been deemed a sufficient excuse for any crime done under its influence." This, it cannot be doubted, is good law, although few opportunities of enunciating it have, as far as we know, occurred in England.[1] It has, however, been confirmed by other Judges in America. Thus, in the State *v.* Hundley,[2] while it was expressly laid down that "temporary insanity produced immediately by intoxication does not destroy responsibility for crimes, where the patient when sane and

[1] Lord Hale has remarked (P. C., pt. i., ch. 4): "If by means of drunkenness an habitual or fixed madness be caused, that will be excuse, though it be contracted by the vice and will of the party; for this habitual or fixed frenzy puts a man in the same condition as if it were contracted at first involuntarily." And Holroyd, J., in Burroughs' Case, (1 Lewin C. C. 75) said: "Drunkenness is not insanity, nor does it answer to what is termed an unsound mind, unless the derangement which it causes becomes fixed and continued by the drunkenness being habitual, and thereby rendering the party incapable of distinguishing between right and wrong."

[2] 46 Mo. 414.

responsible made himself voluntarily drunk." The Court further held that to be punishable, the crime must be the immediate result of the fit of intoxication and while it lasts, and not the result of insanity remotely occasioned by previous bad habits. In the latter case, it was held that insanity is entitled to the same consideration as when arising from any other cause.

§ 373. **Responsibility of Persons laboring under Delirium Tremens.**—It follows from what has been said above that the law regarding delirium tremens, as it must do, as a mental disease caused by the excessive use of intoxicating liquors, and as due to habitual excesses as distinguished from one voluntary debauch, cannot regard the individual thus affected as a responsible citizen, otherwise it would be unable to exempt any insane person from the severest penalties of the criminal law. We have seen that it is most difficult to discover the genesis of disease.[1] "Was it this man or his father sinned, Lord, that he was born blind?" asked the Jews; and the difficulty they felt must be experienced by each person who endeavors to find the roots of unhealth in the mould of history. In many cases, if the truth were known, insanity other than delirium tremens is the direct result of long indulged habits of vice, and so long as the law deals with these upon the ordinary principles applicable to mental unsoundness, so long must it deal with individuals laboring under delirium tremens in the same way. And such is actually the policy and practice of the law, as will be evident from the many cases already adverted to.[2]

[1] But in order to excuse a crime on this ground, it must have been committed during the actual insanity which characterizes it. Thus, on a trial for murder, the defence of insanity was set up, and it was attempted to prove it by showing a great amount of senseless extravagance and absurd eccentricity of conduct, coupled with habits of excessive intemperance, causing fits of delirium tremens. The prisoner, however, it was proved, was not laboring under the effects of such a fit at the time of the act, and the circumstances showed sense and deliberation, and a perfect understanding of the nature of the act. It was held that the evidence was not sufficient to support the defence, as it rather tended to show wilful excess and extreme folly than mental incapacity. Per Erle, C. J., Reg. v. Leigh, 4 F. & F. 915.

[2] See the case of Wylie, which was tried in Glasgow, 30th Sept., 1858, 3 Irvine, 218, where the accused committed murder during the delirium of this disease, and was found not guilty.

§ 374. **The Restraint of Drunkards.**—Something, although not a great deal, must be said upon this important subject. It is well known that the English law refuses to interfere with the liberty of an individual on the ground of drunkenness, even although the intoxication may have become habitual and passed from vice into disease. The law of England has a superstitious respect for the liberty of the subject, and this respect has stood in the way of many most useful reforms. The great principle of State education, the principle that just as government does not allow men and women to starve, but supplies them with physical sustenance, so ought the law to make mental pauperism impossible, by the supply of mental training, was opposed on the ground that if government did so interfere, it would be unwarrantable meddling with the liberty of the subject. So in sanitary reform. The contagious disease acts have been and are vigorously opposed upon the same ground, and disease is allowed to reign supreme over the health, the liberty, and the lives of thousands, all because of this obsolete theory. And so, out of respect to this same theory, an individual is allowed to deprive himself of all liberty, to place himself in a position in which there are numberless temptations to crime, and no adequate protection for those who may commit criminal acts, to cultivate disease in himself and others that may come after him, and to sow the seeds which will grow up either in crime or insanity in the next generation. Still England will not interfere. Many of the United States have taken what seems to us a rational course in this matter, and deal with habitual drunkards in a way which is beneficial to themselves, their friends and relatives and the State.[1] [258]Belgium and Sweden have passed measures for the restraint of habitual drunkards. The Province of Quebec has recently passed an excellent "act for the interdiction and cure of habitual drunkards;"[2] and the necessity of restrictive measures has been

[1] See evidence of American witnesses examined before the Habitual Drunkards' Committee.

[2] Assembly Bill, No. 24 (1870.) The use of the Canadian bill, which provides for the interdiction and cure of habitual drunkards, will be found in full in Dr. Lauder Lindsay's paper. The first clause provides that "on petition, under oath, presented to any one of the Judges of the Superior Court of Lower Canada (who alone shall have the power to act) by any relations, whether of blood or by affinity, or, in default

felt both in Australia and New Zealand.[1] And still England will not interfere. It is calculated that there are about 60,000 lunatics in England and Scotland, and that there are not less than 600,000 habitual drunkards. And it is believed, upon such evidence as can be procured, that not less than 50,000 or 60,000 lives are lost annually in England through accidents and diseases caused by the abuse of intoxicating liquors; and yet England will not tie the hands of those suicides—because alcohol is a slow poison. The liberty of the subject is allowed to render persons, in the words of the Canadian bill mentioned above, "of grievous injury as well to their relations as to their creditors:" it is allowed to stand in the way of the reclamation by a "reasonable and regular course of [250] treatment of many who might be made useful citizens of a State, which is exhausted with the weight of its burden of disease and crime." The late Dr. Donald Dalrymple labored earnestly and untiringly to secure some legislation upon the point in this country, but although a select committee sat and inquired into the whole subject, listened to the evidence of many medical men who were well suited to give a valuable opinion on the subject, of the governors of prisons, magistrates, coroners, barristers, and others, and although almost every witness called before the committee expressed an opinion in favor of some restrictive measures, and although the committee reported in favor of such legislation, nothing has as yet been done, and the death of Dr. Dalrymple is likely to be another retarding circumstance in the course of legislation, which, although delayed, is nevertheless inevitable. One thing is certain, and that is, that long-continued habits of intemperance, even when they do not induce

of relations, by any friend, of any habitual drunkard, setting forth that by reason of such drunkenness such habitual drunkard either squanders or mismanages his property (or places his family in trouble or distress, or transacts his business prejudicially to the interests of his family, his friends or his creditors; or that he uses intoxicating liquors to such an extent that he incurs the danger of ruining his health and shortening his life thereby); such Judge, for any such reasons established before him to his satisfaction, may pronounce the *interdiction* of such habitual drunkards, and appoint a *curator* to him to manage his affairs and control his person as in the case of one interdicted for insanity." And the third clause provides that "the interdiction of any person interdicted as an habitual drunkard shall have the same effect as those conferred by the law in force in this Province in the case of interdiction of any person for *insanity*."

[1] See paper by Dr. Lauder Lindsay, Edin. Med. Jour., Sept., 1870.

insanity, almost invariably render the individual incapable of managing his own affairs with any efficiency, and it would seem to be reasonable, and in conformity with the expressed opinions of physicians[1] in all countries, to restrain individuals thus affected, and in this way give certainty of ultimate recovery. It is also true that the fear of being deprived of liberty might act beneficially upon the individual at the time when this baneful habit is only in the process of formation. A case described by Dr. Taylor[2] is somewhat interesting in this connection. But, as yet, no measure exists in this country to prevent this most pernicious habit, or to mitigate the evils which arise from its indulgence. It is in keeping with England's character as a nation of shopkeepers that the excellence of its civil laws and their administration is beyond all question—almost beyond all rivalry; while its sanitary arrangements are of the most defective nature. It is only recently that health bills have received any general attention, and even now the attention which they do receive is inefficacious to secure anything like a satisfactory settlement of questions of the most paramount importance. And yet, is it not evident that the best laws in the world are thrown away upon a nation rotten with disease, and that even bad laws would do but little harm to a nation thoroughly healthy in the widest and truest sense of the word? Look what different growths Liberty has had amongst us here, who have to struggle, and on whose foreheads the fulfilment of the curse that Adam earned is seen, and amongst those who have had elbow-room [260] in the world, and a land which brought forth abundance with but little toil. What are good laws to us if we cannot live? and if we can live, what harm can bad laws do if we live happily and healthily? Those persons who shut their eyes to the close connection which exists between disease and crime are careless observers. Those who, while they legislate for the latter ignore the existence of the former are careless legislators.

[1] See On some of the Medico-Legal Relations of the Habit of Intemperance, by Sir Robert Christison, Edinburgh, 1861; Annual Reports of the Commissioners in Lunacy for Scotland, 1859–1870; The Social and Political Relations of Drunkenness, two lectures, by Professor Laycock; Dr. Dagonet in Journal of Mental Science for 1866, p. 256.

[2] Medical Jurisprudence, p. 1129.

CHAPTER XVIII.

APHASIA AND APHONIA.

§ 375. **The Nature of Aphasia and Aphonia.**—These names are given to a disease which is manifested by a derangement or loss of the faculty of speech. There is a loss of speech which occurs while the organs of phonation are to all appearances perfect, and a confusion of speech which occurs while the intellect is unimpaired. Much controversy has taken place as to the cause of this impairment of language, and a considerable party of disputants maintain that it is due to a material lesion, while others are equally strenuous in maintaining its psychical origin. Long ago, Gall announced that the faculty of language was seated in those portions of the brain which rest on the hinder part of the superorbital plate. And quite recently, Dr. Hammond, after examining and reviewing the theories of Darx and Broca, says "that the organ of language is situated in both hemispheres, and in that part which is nourished by the middle cerebral artery;" and further, that while the more frequent occurrence of right hemiplegia, in connection with aphasia, is in great part the result of the anatomical arrangement of the arteries which favors embolism on that side, there is strong evidence to show that the left side of the brain is more immediately connected with the faculty of speech than the right."[1] On the other hand, Dr. Bateman has, in his able and elaborate treatise,[2] endeavored to show that aphasia has no material centre, and that all attempts to give it anything but a psychical origin have failed. But we in this place have

[1] Diseases of the Nervous System, New York, 1871, p. 202.

[2] On Aphasia or Loss of Speech, and the Localization of Language, by Frederick Pateman, M.D., London, 1870.

scarcely to determine whether loss of speech exists without either right hemiplegia or lesion of the third left anterior convolution, or whether these lesions may exist without any effect on speech. We have really to do with the means of recognizing this disease, and one or two cases will serve to illustrate its real nature. This [261] deprivation is sometimes general and sometimes partial. Thus, in a case mentioned by M. Broca,[1] the individual answered every question by means of the single monosyllable "Tan," and Sir Thomas Watson[2] speaks of a gentleman who misappropriated words; thus, when he wished to say "camphor," he made use of the word "pamphlet;" and Dr Bergmann[3] has described a case in which the memory was, owing to an injury done to the head by means of a fall, affected in a peculiar way. The man forgot proper names and nouns, and at the same time he had a perfect memory of things and places, and he could pronounce correctly any verb. The case reported by Dr. J. G. Glover to the Clinical Society of London in 1871 is also curious. There the patient was without any trace of cerebral disease, with no hemiplegia, with no difference in sensation of the two sides, with ability to walk, write, and to protrude the tongue straight; was yet unable, when shown a familiar object, to recall the proper name for it, but would designate a book before him as "good," "horse," "butter;" called a watch *tempus fugit*, though able to write the word watch correctly. A similar perversion of words pervaded his whole range of vocal expression. Many other cases might be quoted to show in what way the morbid conditions of the brain manifest themselves.[4] However, it is not our duty in this place to do more than indicate the existence of such a morbid mental condition, and to point out in what way it may be recognized, and how its existence, when proved, must modify the legal relations of the individual in whom it occurs. This is not a place for the consideration of the inter-

[1] Sur le Siége de la Faculté du Langage Articule.

[2] Practice of Physic, vol. ii., p. 511.

[3] Einige Bemerkungen uber Störungen des Gedächtriess und der Allgemeine Zeitschrift fur Psychiatrie, 1849, s. 657.

[4] Some of the most interesting of these will be found in a paper on Impairment of Language, in vol. ii. of the West Riding Asylum Medical Reports, by Dr. W. A. F. Browne.

esting questions with regard to cerebral pathology which have arisen in connection with this subject, or to trace the curious confirmation which has been given by the modern physiologists, some of the ablest of whom have [262]ascribed aphasia to a lesion in the posterior part of the third frontal convolution of the left hemisphere, to the theories of phrenologists.[1] A comparison of Dr. Bateman's papers[2] upon aphasia with some of those contained in the Phrenological Journal[3] will prove this interesting fact. There can, however, be no doubt of the existence of this very curious phenomenon, and it is manifested in various ways. Dr. Falret has made the following classification of some sixty-two cases which he has collected from various authors.[4] 1. All those cases in which the patients, whilst retaining intelligence and integrity of the organs of phonation, can only remember or articulate certain words or classes of words, or even certain syllables or letters, but who can repeat and write any word that may be suggested to them by others. 2. Those who are only able to pronounce spontaneously certain words, syllables, or phrases always the same, not being able to repeat other words dictated to them, and who yet retain the power of writing or even reading. 3. Those more rare cases in which the patients can only pronounce certain words always the same, which, aided by gesture, enable them to express their thoughts, the power of reading, writing, and repeating words being abolished. M. Broca mentions a very interesting case falling under the last of these three class descriptions. The individual who in this case suffered from aphasia, used four words, and attached a definite meaning to each of these four. The words saved out of the wreck of a vocabulary were "*oui*, *non*, *tois*, (for *trois*,) and *toujours*." When he wished to affirm, he used the first; when he wished to negate, he used the second. By the third, he expressed all ideas of number, but he was conscious that it did not convey all his meaning, for

[1] See Memoir by Professor Saunders on Aphasia, Edin. Med. Journal, vol. xi., pp. 811 and 1042.

[2] See Journal of Mental Science, vol. xiii,, p. 521, vol. xiv., pp. 50, 345, 489. See also Trousseau's Clinique Medicale, tom. ii.

[3] See vol. iii., pp. 26, 616, etc.

[4] Des Troubles du Langage, p. 5.

when he wished to show that the number meant was more than three, he held up his fingers. This gesture was an accurate indication of the state of the case. Whenever none of the three first words would do, he used the fourth, *toujours*, which, as may be understood, had no very definite connotation.[1]

§ 376. **Necessity for Considering the Legal Relations of Aphasics.**—Now, these cases and many more of equal interest, which will be found quoted and narrated in the works already referred to, indicate the necessity of the recognition of this [263] disease by those persons who devote themselves to medical jurisprudence. If a man loses the faculty of speech, if he substitutes one word for another, if he says "No" when he wishes and means to say "Yes," if he has a vocabulary limited to four words, and at the same time is in possession of all his intellectual faculties, it is surely evident that he cannot occupy the same relation to his fellow-men that those persons do who are possessed of a sufficient vocabulary to carry them through life with its ordinary business transactions; and it is surely clear that, just as there are peculiar provisions for those who cannot write, so ought there to be some provisions for those who cannot speak. The four or five words of the man mentioned by Broca are very much in the same relation to his intelligence that an illiterate person's mark is to his.

§ 377. **The Capacity of Aphasics.**—Most of the people who are dumb are dumb only because they are deaf, and the law, upon account of the impossibility of their acquiring any adequate knowledge, has looked upon them as idiots, but it is a very different matter where speech has been lost owing to some bodily disease or local injury. In these cases education has raised the individual to the ordinary level, and the mere obliteration of a piece of local memory, of a portion of a vocabulary, or the loss of power to concatenate the exact sound with its appropriate idea, does not deprive the individual of all the power to do many things as well as he did them formerly.

[1] See another case, Phrenological Journal, vol. xii., p. 155.

And it is difficult to see why, when that is the case, the individual thus affected should be deprived of any of the civil privileges he is capable of exercising; and there can be no possible reason why, in case of the commission of a crime, the individual suffering from aphasia should be held irresponsible.[1] Of course in every case due precaution must be taken that the act is performed or the words used are understood as the individual who is exercising a civil privilege wishes them to be done or understood. Just as in an English court a foreigner who cannot speak the language can, by means of a sworn interpreter, give evidence, so we would be inclined, after medical evidence had been heard as to the competency of the witness, to allow a person laboring under aphasia, by means of a sworn interpreter who understood the words or gestures of the patient, to bear testimony; and so with regard to all acts, such as contracts and testamentary acts, where by means of competent witnesses it is proved that the individual had the capacity as it is defined in another part of this work; and by witnesses on oath or [264] by affidavit, that the inappropriate words or gestures were properly interpreted at the time of the execution of the will or of the agreement of the contract, we would hold that the latter was binding and that the former was a good will. In every civil matter in which the possession of speech is not absolutely necessary we would, after similar precautions had been taken to ascertain the state of mind of the individual and his desires in the matter, allow to a person affected with this marked condition the exercise of every privilege and the enjoyment of every right. With regard to the criminal responsibility of persons laboring under aphasia nothing requires to be said. It is evident that, if a man is in a position to enjoy privileges and rights, he is in a position to respect those of others; at least, that is true in cases of aphasia.

[1] See Simpson v. Gardiner's Trustee's, 11 S. 1049.

CHAPTER XIX.

DELIRIUM.

§ 378. **Mania and Maniacal Delirium.**—[265]It is a matter of much importance to a medical jurist to be able to distinguish between mania and maniacal delirium. We have seen that all insanity is due either to a functional or organic change in the nervous centres, but there is a kind of insanity which is called delirium which is due to an acute disease either in the brain itself or in some organ with which it sympathizes. In the latter case the insanity is, as it were, grafted upon the bodily disease; in the former case it is a disease in itself. These two diseases not only differ in their origin, but the progress of each is very unlike that of the other. The prognosis is, of course, dependent upon these two things, the cause and the course, and it would be somewhat extraordinary if we found those widely different while the termination was the same.

§ 379. **Delirium.**—The difference between mania and maniacal delirium begins almost before the disease can be said to have commenced. The premonitory symptoms in cases of acute delirious mania are seldom well marked. Indeed, instead of the patient feeling that there is something wrong for weeks and months, as is not unfrequently the case in the early stages of mania proper, the individual may awake from sleep delirious. It is, perhaps, more generally manifested in the first instance by muttering or talking during sleep, and by a want of recollection and recognition of the persons and things about him when he wakens from dreams. So it is we see that waking state, sanity, pass into that dream frenzy mania. In the earlier stages of the disease, however,

this want of power of recognition is only transitory, and the patient when fully aroused is conscious of his position and surroundings. Soon, however, reveries become embodied as it were. The patient lies and mutters for hours together: he is no longer capable of recognizing persons who are [266]familiar to him, although this power is only gradually lost, and after conscious efforts made to retain a coherence, and then the mutterings become louder, the listless inaction becomes endless activity, and the tongue is incessantly employed in uttering incoherent nonsense. Most diseases which have a fatal termination at some period of their course present symptoms of some disturbance of the mental functions, and many of them are accompanied, especially towards their termination, by the symptoms which we have to consider in this chapter. Thus, delirium arises in connection with organic diseases of the brain—for example, inflammation of its membranes,[1] or it may arise in the course or during the decline of such acute diseases as pneumonia, measles, or fever. It not unfrequently comes in connection with phthisis, acute rheumatism, or epilepsy. It may be induced by excessive fatigue, long continuance in the use of intoxicating liquors, or by the conditions which accompany parturition. It is also to be remembered that delirium is a symptom of poisoning by belladonna, henbane, and stramonium, that it frequently results from poisoning by other poisons which are classed under the head narcotic acrids, that it occasionally arises from overdoses of the pure narcotics, and may be brought on even by the action of some of the irritant poisons. When delirium does occur as a concomitant of inflammation of the mucous or serous membranes of the liver, spleen, or kidneys, it only appears when the disease is approaching a fatal termination; and the same observation is true of the delirium which sometimes supervenes upon a surgical operation.

§ 380. **Symptoms of Delirium.**—With regard to the symptoms of this disease, when it does give warning of its approach, it does so by means of flushing of the face, pain and throbbing in the head, and heat of the scalp. After the

[1] See Reynold's System of Medicine, pp. 358, 417, 683.

mental symptoms mentioned above have shown themselves, while the patient is laboring under the incoherence described and is unable to be aroused to any attentive effort, the eyes are generally open, dry, and bloodshot, and "staring so blindly!" The skin is generally dry, hot, and the patient is restless, and is inclined to indulge in continuous activity of some sort, which is occasionally rhythmic. Even his loud talk, his cries or exclamations, his uneasy tossings, have often a rhythmic character. The patient at this stage of the disease is generally very restless, and is with difficulty kept in bed. With regard to the peculiarity of the thoughts of [267]those who are laboring under maniacal delirium, it has been remarked that very often dead memories are brought to life again.

"One sees the dungeons of a head
When fever opens all the doors."

§ 381. **Of Memory in relation to Delirium.**—One of the faculties of the human mind which will best repay patient study is the memory. People have argued that in relation to its strength or weakness may the power and capacity of the mind itself be determined; and although it seems to us that that is scarcely a correct statement of the fact, still it contains some truth and is worthy of being weighed as of value practically. It has been argued that the memory forgets nothing, and that seeming forgetfulnes is nothing more than an inability to recall, and some of the facts which have been observed in relation to delirium go far to substantiate that theory. Thus, the case given by Coleridge in his Biographia Literaria,[1] which is so often quoted in philosophical discussions, is one in point. It is that of a young girl who, while laboring under nervous fever, was found in her incoherence to be quoting Latin, Greek, and Hebrew, "in very pompous tones, and with most distinct enunciation." The explanation of this very curious phenomenon was simple. When the girl, who was in very poor circumstances, was only nine years old she had been charitably taken by an old Protestant pastor, and had remained with him until his death. It was ascer-

[1] Vol. i., p. 117 (ed. 1847.)

tained that this pastor had been a very learned man and a great Hebraist; and amongst his books were found a collection of Rabbinical writings, together with several of the Latin and Greek fathers, and there was no difficulty in identifying many of the passages which the servant girl had quoted in her delirium. It was proved that all these passages had become a part of her memory by means of unconscious eavesdropping, for the pastor used to read aloud, and the girl must have heard him while she was at work in the kitchen. [268] Another somewhat similar case illustrating the curious resurrection of dead memories in dreams and delirium will be found in Lord Monboddo's Ancient Metaphysics.[1]

§ 382. **Remissions in this Disease.**—Where the disease, of which the delirium is a symptom, is about to prove fatal, the incoherence and restlessness disappear, and are generally succeeded by coma, but occasionally just before death the mind becomes clear although enfeebled by disease. In this state the individual is quite capable of recognizing his relations, can speak rationally, is cognizant of what is going on around him, and may often be in a position to do certain legal acts with all the mental capacity which is required by law. As this state may sometimes continue for some hours, and even, in rare cases, for days before death, its recognition by medical jurists is of the utmost importance. The distinction then to which we adverted, which exists between acute mania and acute maniacal delirium is one which it will not do to overlook. As a question of treatment difficulty will arise unless the distinction is clearly appreciated. In the one case it would be proper to suggest exercise and open air, and these should be procured even if a certain amount of restraint was necessary for the purpose; in the other such treatment would be most unscientific, and would accelerate the fatal issue of the disease. Again, with regard to the removal of the sufferer to an asylum the diagnosis is of paramount importance, for there are many patients who, if treated at home by friends, might probably recover, would by removal to an asylum be placed in much less favorable circumstances, and

[1] Vol. ii., p. 217. See also Rush on Disease of Mind, p. 282.

that, when no such removal was necessary, as for the short time which delirium lasts, all the necessary comforts and conveniences could be supplied at the patient's own residence. A mention of the points in which mania differs from delirium may be of some use.[1]

§ 383. **Mania distinguished from Delirium.**—In mania the patient is capable of recognizing persons and things, and is alive to the circumstances which occur in his presence. In delirium the patient is generally unable to make any distinctions, memories are confounded with perceptions, and are often more real than sensual impressions. It follows that in delirium there is an entire absence of the power of reasoning which is a faculty of relations, and where comparison is impossible there also ratiocination is unattainable. In delirium there is a chaos of ideas, not one stone of the mental house has been left upon another; the individual is sane in nothing; ideas have lost all the molecularity which gives them coherence. In mania, however, this is not the case. The individual does reason; the laws of association have been tampered with, but they still exist. The individual can at times be coherent and rational. He retains command over his muscles, will occasionally understand and laugh at a joke, can occasionally follow for a short time the windings of a conversation, and can often be made to see the ridiculous character of his conduct. His senses are acute, the bodily functions are undisturbed. The health is not materially impaired, and the presence of mania is not a cause for the apprehension of immediate death, although it does shorten life. In [269] delirium, on the other hand, there is muscular prostration, sensation is impaired, every bodily function is more or less interfered with, and the disease with which it is associated is speedily terminated by death or by restoration to complete health. As delirium is, as it were, a parasite upon another disease, its life is determined by that of the disease of which it is the concomitant; when that is aggravated it is increased; when that is removed it ceases to exist. One other feature

[1] See with regard to delirium Georget in Dict. de Médecine, t. vi., p. 395; Esquirol in Dict. des Scien. Med., t. yiii., art. Délire. See also Etudes Cliniques des Maladies Mentales, M. Morel, t. i., p. 124; Griesinger Syd, Soc. ed. (1871) § 130.

has been remarked with regard to this morbid condition which is not unworthy of notice, and that is, that while mania never occurs until after the age of puberty, delirium has, like death, "all seasons for its own."[1]

Part II.

THE LEGAL RELATIONS OF DELIRIUM.

§ 384. **Where there are Lucid Intervals.**—[270]In relation to delirium there can be no question as to the existence of lucid intervals. Sir John Nicholl has said, "in cases of permanent, proper insanity, the proof of a lucid interval is matter of extreme difficulty, and for this among other reasons, namely, that the patient so affected is not unfrequently rational to all outward appearance without any real abatement of his malady; so that, in truth and substance, he is just as insane in his apparently rational as he is in his visible raving fits. But the apparently rational intervals of persons merely delirious, for the most part, are really such. Delirium is a fluctuating state of mind created by temporary excitement, in the absence of which, to be ascertained by the appearance of the patient, the patient is most commonly really sane. Hence, as also, indeed, from their greater presumed frequency in most instances in cases of delirium, the probabilities *a priori* in favour of a lucid interval are infinitely stronger in a case of dilirium than in one of permanent, proper insanity, and the difficulty of proving a lucid interval is less in the same exact proportion in the former than it is in the latter case, and has always been so held by this Court."[2]

§ 385. **The Caution with which Wills made during an Interval of Delirium are to be Received.**—When, then, lucid intervals can be proved to exist in the course of delirium, it would be very unjust to deprive individuals who may be thus affected of exercising those privileges which during

[1] Two cases are described by Dr. Maudsley in the Journal of Mental Sci. (vol. xiii, p. 59,) which illustrate some of the distinguishing features of these two conditions.

[2] Brogden *v.* Brown, 2 Addams, 441. See also Evans *v.* Knight, 1 Add. 229, and Lemann *v.* Bonsall, 1 Add. 383.

health they have a right to enjoy. Thus testamentary dispositions made during the intervals of frebrile delirium ought, if the lucidity of the interval can be proved, to be upheld. It is not, by any means, uncommon to find that wills made under such circumstances are [271] disputed, and there may be reason for this if there is the least suspicion of improper or undue influence exercised upon the mind of the testator. The purpose of the law is to strengthen the weak against the strong; and there is an Indian fable which says that the God Brahma inquired of the Spirit of Power, "Who is stronger than thee?" and the Spirit answered, "Cunning." The law ought, and is, to be most careful in inquiring into the volitional character of every act done by those who are weak, and it is upon this principle that courts of equity extend their especial protection to sailors and marines. So it is that, in those cases in which wills have been executed during a sane interval in an attack of delirium, great caution is required in ascertaining that neither intimidation nor fraud of any kind was made use of, because, as we have seen, the mind is invariably enfeebled even during the existence of these lucid intervals, and what would not to a strong man seem a motive is compulsion to a weak one.

§ 386. **As to Contracts entered into during the Intervals in Delirium.**—The law, while it ought to allow and does allow the full exercise of the testamentary power under the conditions indicated above, would do well to exclude such individuals from the exercise of other rights, such as that of entering into contracts, or ought to give them the same protection and support as it does to minors, whose contracts are good if they are advantageous to the interests of the infant, but not otherwise. At least, it ought to be an acknowledged rule that all contracts entered into during the lucid intervals of a disease accompanied by delirium, should be looked upon with suspicion, and a presumption should exist as to their invalidity. This presumption, however, might be liable to be rebutted by proof that the delirium was only an occasional symptom of the disease, that the attacks were of short duration, and that, when the individual was free from delirium, he was calm and rational.

§ 387. **Delirium and Testamentary Capacity.**—With regard to the capacity to make a will, one or two cases may be cited. In that of Evans *v.* Knight,[1] the testator died upon the 24th of April of pneumonia. The latter stages of this disease had been marked by delirium, and it was proved that he had executed his will only three days before that on which he died. Two medical men were examined in this case: one, who had seen the testator on the 21st, or the day on which he made his will, deposed that "he was not in a state of sound mind, memory, and understanding, or capable [272] of doing any act requiring the exercise of thought, judgment, and reflection." The other, who had seen the testator on the 23d, expressed an opinion that it was extremely "improbable that the deceased should have been free from wandering and mental affection on a day so shortly before he saw him as the 21st." It was, however, proved that he had given instructions for a will without having any suggestions made to him by the solicitor, who reduced them to writing, that subsequently they were read over to him, and that he had signified his approval and subscribed them. Not only did the act itself and the way it was done prove him to be rational, but several witnesses testified that, during the whole time he was giving his instructions, he was calm and conducted himself with perfect propriety, and as he would have done before he was taken ill. In this case the Court pronounced in favor of the disposing power of the deceased.

In another case, that of Brogden *v.* Brown,[2] the testatrix died of an acute disease after an illness of ten days. For two or three days before her death, she was at frequent intervals delirious. She executed her will on the evening of the day preceding her death, and its validity was called in question on the ground that she was not of sound and disposing mind at the time of its execution. The evidence of two medical men, who were examined in this case, was very like that of the two physicians in the last-mentioned case. They both regarded her as incapable of making a will at the time alleged, and they had somewhat good grounds to go upon, as they had seen her only a few hours before the time at which

[1] 1 Addams, 229. [2] Addam's Rep. 441.

the will was made. The evidence of a third medical gentleman was in favor of the theory of disposing capacity, as he regarded the delirium due to paroxysms of pain suffered by the deceased, and was of opinion that, during the absence of pain, there would also be a complete absence of the abnormal mental symptoms. It was proved that the will was read over to the deceased, and that, when it was placed before her as she sat propped up in bed, she signed her name in the usual way, with the accustomed dash below. The validity of this testament was held to be established by the Court.[1]

§ 388. **The Nature of the Act to be considered.**—[273] It will be evident to any one who peruses any of the cases which have come before the courts of this country, that the circumstances connected with the testamentary act are those which are most carefully considered in the decision of questions of capacity, when there is a possibility that the individual may have been deprived of the disposing power by the existence of mental unsoundness; or, in other words, the testamentary capacity of an individual is to be determined mainly by the nature of the act itself. If it is such a will as we should have expected the individual to make while he was in a state of health, if the disposition of his property has been guided by his normal feelings and affections, if it is in no way inconsistent with his known desires and wishes, there will be a strong presumption in favor of the validity of the testament. Again, if it is consistent in itself, the presumption is strengthened, and so it will be if the will is only a slight and reasonable alteration of a former testamentary instrument executed by the individual while in a state of health. All these circumstances bear closely upon the question as to whether a will made by an individual in a supposed interval between attacks of delirium should be regarded as indeed the will of the testator, and established, or as an instrument extracted by undue persuasion or fraud from a person who was not capable of expressing a rational desire with regard to his property, and shall in consequence be held in-

[1] See also Cook *v.* Goude and Bennett, 1 Hagg. 577; King *v.* Farley, 1 Hagg. 562; Waters *v.* Howlett, 3 Hagg. 790; Bird *v.* Bird, 2 Hagg. 142; Martin *v.* Wotton, 1 Lee, 130; Bittleston *v.* Clark, 2 Lee, 229; Marsh *v.* Tyrrell, 2 Hagg., Ecc. Rep. 122.

valid. Slight remissions occurring in the comatose sleep, which is a symptom of some diseases, are not to be regarded as lucid intervals.[1]

§ 389. **General Remarks.**[2]—If these principles are had regard to in the determination of questions which may arise as to the validity of testaments and the legality of certain other acts, executed and performed during a lucid interval in an attack of maniacal delirium, or that return to mental clearness which occasionally precedes death in such cases, little difficulty will arise. There is no subject connected with the medical jurisprudence of insanity upon which the law can be said to be more definitely laid down. There are few subjects upon which medical men and lawyers differ less than that of the legal relations of those persons who labor under acute delirious mania.

[1] Brydges *v.* King, 1 Hagg. 256. [2] See 1 Redfield on Wills, ch. iii., sec. x., § 12.

CHAPTER XX.

LUCID INTERVALS.

§ 390. **The Law of Periodicity.**—[294]There is no law more marked, as we have already said, in relation to vital phenomena than that of periodicity. Everything in nature is periodic. The sun, which is, as it were, the bulb root of life, makes the seasons, makes night and day, makes noon and midnight, and so it is that the whole of the vital processes in man had to become periodic. Thus habit, which tends to constant reproduction of automatic acts, is influenced by this law and produces acts in relation to certain periods. Thus recreations become periodic; sleep becomes periodic; the appetites become periodic; and it would be anomalous if, when all the processes of health are modified by this principle, the morbid conditions of body should not also be under its control. Nervous force becomes exhausted, and a period of rest must follow a period of activity. Nervous force must be accumulated. Now habit, which is like the fly-wheel of a steam engine, and governs and regulates the movements, makes this periodical necessity of rest a matter in relation to time rather than in relation to labor already done. In this way periodical accumulation of nervous force, periodical feelings of kindness become a part of man's constitution. So it is with diseases, especially, as could be argued from the above explanation, with nervous diseases. Thus it is we find neuralgia coming on at a certain hour, and from these facts it is not difficult to infer that most, if not all, diseases are periodic. Now, the question as to periodicity when it comes to be asked with regard to insanity must have the answer which has been indicated by the above deductions. The fact that the name by which it is still known,

lunacy, ascribed the origin of the disease to the influence of the moon, evidently points to remissions and exacerbations of the disease corresponding to the monthly changes. That this periodicity is not so marked now is true, but that it was observed in old times seems certain. That the tides [295] should be in the leading strings of lunar influences, that all the waters of the world should be moved by the gravitation of the moon, and that man should be unaffected by this influence, it is somewhat difficult to conceive. How far the menstrual discharge is governed by this law it is impossible to conjecture, and all our efforts to ascertain the exact effects of this cause fall very short of the mark.

§ 391. **Lucid Intervals.**—The philosophy of medicine is not sufficient to dream of all things in heaven and earth. Now, that there are marked remissions in insanity is a well-known fact. We know that at certain hours of the day the wards of an asylum are more noisy, just as at certain hours of a day the pulse is higher. But besides these simple remissions in the violence of the manifestations of disease, there are some remissions which have a striking resemblance to mental health, and these have been called lucid intervals. That there may be long periods of health between attacks of mania has scarcely been doubted, but many medical men have hesitated to believe that, in those remissions of a shorter duration which do take place in the course of this disease, there is any return to a normal mental condition. Thus, Dr. Combe observes: "However calm and rational the patient may appear to be during the lucid intervals, as they are called, and while enjoying the quietude of domestic society, or the limited range of a well-regulated asylum, it must never be supposed that he is in as perfect possession of his senses as if he had never been ill. In ordinary circumstances, and under ordinary excitement, his perceptions may be accurate, and his judgment perfectly sound, but a degree of irritability of brain remains behind, which renders him unable to withstand any unusual emotion, any sudden provocation, or any unexpected emergency. Were not this the case, it is manifest that he would not be more liable to a fresh paroxysm than if he had never been attacked. And the

opposite is notoriously the fact; for relapses are always to be dreaded, not only after a lucid interval, but even after perfect recovery; and it is but just, as well as proper, to keep this in mind, as it has too often happened that the lunatic has been visited with the heaviest responsibility for acts committed during such an interval, which previous to the first attack of the disease he would have shrunk from with horror."[1] Considerable misunderstanding has existed upon this point up to the present time.

§ 392. **Intermissions and Remissions.**—[296] With regard to lucid intervals, many persons have been of opinion that they were to be clearly distinguished from well-marked remissions of the disease, while others have held that they were only to be distinguished from intermissions by the length of their duration. Thus Taylor[2] holds that there is a well-marked distinction capable of being observed and maintained between a remission of mania and a lucid interval, although in another place he says that nothing more is intended by a lucid interval than that the patient shall become entirely conscious of his acts and capacity. Perhaps the truth is that intermissions are not to be distinguished in any way from remissions; and that the distinction between functional or dynamic and organic disease, is more apparent than real. Those persons who have held that a lucid interval was only a remission of the violence of the symptoms of the disease are at variance with some of the best legal opinions upon this point. Dr. Haslam has been mentioned as one of those who hold the impossibility of lucid intervals, as it has been defined in the courts of law upon the authority of some of the ablest members of the medical profession, but we find him saying in one place: "I should define a lucid interval to be a complete recovery of the patient's intellects, ascertained by repeated examinations of his conversation, and by constant observation of his conduct for a time sufficient to enable the superintendent to form a correct judgment. Unthinking people are frequently led to conclude that if, during a short

[1] Observations on Mental Derangement, p. 241. See also Etudes Physico-Somatiques sur l'Alienation Mentale par S. E. F. Renaudin, chap. ix., p. 522, Paris, 1854.

[2] Medical Jurisprudence, 651, ed. 1861.

conversation, a person under confinement shall betray nothing absurd or incorrect, he is well, and often remonstrate on the injustice of secluding him from the world. Insane people will often, for a short time, conduct themselves both in conversation and behavior with such propriety that they appear to have the just exercise and direction of their faculties; but let the examiner protract the discourse until the favorite subject shall have got afloat in the madman's brain, and he will be convinced of the hastiness of his decision."[1] This is not quite consistent with what Dr. Haslam says in another work, where he remarks: "As a constant observer of this disease for more than twenty-five years, I cannot affirm that lunatics, with whom I have had daily intercourse, have manifested alternations of insanity and reason. They may at intervals become more tranquil, and less disposed to obtrude their distempered fancies into notice."[2] In one of these extracts he seems to be of opinion that a lucid interval is an intermission of the disease, and in the other he identifies a lucid interval with a remission.

§ 393. **Legal Holdings with reference to Lucid Intervals.**—In this place, however, we have more to do with legal than with [297] medical definitions. And there have been inconsistencies in the decisions upon this point. In the Attorney General *v.* Parnther, Lord Thurlow said:[3] "By a perfect lucid interval I do not mean a cooler moment, an abatement of pain or violence, or of a higher state of torture—a mind relieved from excessive pressure, but an interval in which the mind having thrown off the disease, had recovered its general habit." And Sir William Wynne, in Cartwright *v.* Cartwright, said:[4] "I think that the strongest and best proof that

[1] On Madness, 46 and 47.

[2] Medical Jurisprudence of Insanity, p. 224.

[3] 3 Bro. C. C. 441.

[4] 1 Phillim. 90. The Chancellor D'Aguessau, in his argument for the Abbé d'Orleans, (see Evans Pothier on Obligations, App. 579,) says of a lucid interval: "It must not be a superficial tranquillity, a shadow of repose, but on the contrary, a profound tranquillity, a real repose: it must be not a mere ray of reason which only makes its absence more apparent when it is gone, not a flash of lightning which pierces through the darkness only to render it more gloomy and dismal, not a glimmering which joins the night to the day, but a perfect light, a lively and continued lustre, a full and entire day interposed between two separate nights of the fury which

can arise as to a lucid interval is that which arises from the act itself that I look upon as the thing to be first examined, and if it can be proved and established that it is a rational act rationally done, the whole case is proved."

Little or no exception has, so far as we are aware, been taken to Lord Thurlow's definition, but much has been said as to the want of precision of the text laid down in the latter case by the Court. Thus Dr. Lushington in one case said: "In the opinion of a very great Judge, Sir William Wynne, in the celebrated case of Cartwright *v.* Cartwright, he said where a rational act was done in a rational manner, such was the strongest and best proof which could arise as to a lucid interval. Now, I cannot say that I subscribe altogether to this observation of Sir William Wynne, for I do not, but it is entitled to great weight; and to a certain extent a rational act done in a rational manner, though not I think the strongest and best proof of a lucid interval, does contribute to the establishment of a lucid interval."[1]

It is evident that many insane persons can do rational acts with perfect rationality, and that when no one could pretend that there was a lucid interval between the paroxysms of the disease. That the rationality of the act, and the rational manner in which it was performed, might be a test as to the possession of sufficient mind to enjoy the privilege of disposing of property by will, is certainly true. But the use of the term lucid interval made use of by the learned Judge in this case is not warranted either by medical opinions or by legal opinions, either before or after his time. In Nichols *v.* Binns,[2] it was decided that where a person afflicted with habitual insanity, with intermission, makes a will the fact that the will is a rational one and made in a rational manner, though not conclusive, is a strong evidence of its having been made in a lucid interval. Take, for instance, some of the de-

precedes and follows it, and to use another image, it is not a deceitful and faithless stillness which follows or forebodes a storm, but a sure and steadfast tranquillity for a time, a real calm, a perfect serenity; in fine, it must not be a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked as in every respect to resemble the restoration of health."

[1] Bannatyne *v.* Bannatyne, 16 Jur. 864.

[2] 1 Sw. & Tr. 239; Carpenter *v.* Carpenter, 8 Bush (Ky.) 283. See The Lord Advocate *v.* Smith & Campbell, 2 Irvine, 1.

cisions of Sir John Nicholl. In a case in which a medical man who had seen the testator frequently, and deposed that on no occasion did he manifest any symptoms of insanity, but "conducted himself and talked and discoursed in a rational manner, and was in full possession of his mental faculties," Sir John Nicholl decided that the proof of a lucid interval was not sufficient, and that, although in the testamentary acts there was nothing to show that the testator was not of sound mind; and in giving judgment Sir John Nicholl said: "It is clear that persons essentially insane may be calm, may do acts, hold conversations, and even pass in general society as perfectly sane. It often requires close examination by persons skilled in the disorder to discover and ascertain whether or not the mental derangement is removed and the mind again perfectly sound. When there is calmness, when there is rationality on ordinary subjects, those who see the party usually conclude that recovery is perfect. Where there is not actual [298]recovery, and a return to the management of himself and his concerns by the unfortunate individual, the proof of a lucid interval is extremely difficult."[1] In another case the same learned Judge said: "I am not able exactly to understand what is meant by a lucid interval; if it does not take place when no symptoms of delusion can be called forth at the time, how but by the manifestation of the delusion is the insanity to be proved to exist at any one time? The disorder may not be permanently eradicated; it may only intermit. It may be liable to return, but if the mind is apparently rational on all subjects, and no symptom of delusion can be called forth on any subject, the disorder is for that time absent. There is then a lucid interval, if there be such a thing as a lucid interval, because it is difficult to ascertain the total absence of all delusions."[2] Now, all this difference of opinion indicates a difficulty connected with the subject; and experience proves that there is much difficulty in ascertaining when a lucid interval is really present.[3]

[1] Groom and Thomas *v.* Thomas and Thomas, 2 Hagg. Ecc. Rep. 433. See also White *v.* Driver, 1 Phillim. 84. See Clarke *v.* Lear, cited 1 Phillim. 119.

[2] Wheeler *v.* Alderson, 3 Hagg. Ecc. Rep. 599.

[3] See Jarman on Wills, vol. i., p. 32; Waring *v.* Waring, 6 Moo. P. C. C. 341; 12 Jur. 947; Creagh *v.* Blood, 2 Jones & Lat 509; Dyce Sombre *v.* Troup, 1 Deane & S. 22.

§ 394. **The Proof of a Lucid Interval in cases of Idiocy or Dementia.**—The rule of law with reference to proof of a lucid interval in the course of disease which is marked by the absence of mind, is somewhat different from that which is in force with reference to the remissions of those diseases which are derangements. In these, it holds that the fact that intelligent acts have been done negatives the possibility of the absence of mind, and consequently in such cases a rational act done in a rational manner would be a sufficient proof of a lucid interval. In one case, the evidence showed that the deceased was in 1815 placed in confinement as an idiot, and there remained till 1817, when he was released. In 1820, about which time he was proved to have committed certain rational acts of business, he made a rational will. In 1822, he was again placed in confinement, and so remained until his death in 1849. In 1833, he was found, on a commission, to have been of unsound mind without lucid intervals since 1815. In this case, the will was sustained on the ground that though it was otherwise with regard to lunacy, yet, when idiocy is set up, it is disproved by contemporaneous intelligent acts of business.[1]

§ 395. **The Burden of Proof.**—Where habitual insanity has existed, the presumption of law is that he was insane at the time of making a will, and the burden is upon those who are seeking to establish the fact of a lucid interval.[2] "If you can establish," says Sir William Wynne, as cited by Jarman,[3] "that the party afflicted habitually by a malady of the mind has intermissions, and if there was an intermission of the disorder at the time of the act, that being proved is sufficient, and the general habitual insanity will not affect it; but the effect of it is this, it inverts the order of proof and presumption, for until proof of the habitual insanity, the presumption is, the party agent, like all human creatures, was rational; but when an habitual insanity of the mind of the person who does the act is established, then the party

[1] Bannatyne *v.* Bannatyne, 16 Jur. 864.
[2] State *v.* Reddick, 7 Kans. 143; and Carpenter *v.* Carpenter, 8 Bush (Ky.) 283.
[3] 1 Jarmin on Wills, p. 67. See also Carpenter *v.* Carpenter, 8 Bush (Ky.) 283.

who would take advantage of the fact of an interval of reason must prove it." And in Smith *v.* Tebitt,[1] it was decided that if a diseased state of the mind is once proved to have established itself, it will be presumed to continue, and the burden of showing that health has been restored falls upon those who assert it.[2] On these principles, then, it is necessary—when it is desired with the view of establishing the testamentary capacity of a testator by the proof of a lucid interval at the time of the execution of the will—to show not merely a remission of the disease, not merely a cessation of the more violent symptoms, but to prove a restoration of the faculties at the very period of execution.[3] It is not, however, necessary to show that the restoration is complete, and that the mental power is in every respect as great as it was before. All that the law demands is, as we have seen, proof of a disposing mind.[4]

§ 396. **The Law with regard to Acts done during Lucid Intervals.**—The remarks made in another place will show in how many cases individuals who are quite insane have a power of concealing their insanity, and if the difficulty is great in such cases, it is, perhaps, greater in determining the condition of mind which has been defined above. When, however, its existence is admitted or satisfactorily proved, there is no question as to the legal consequences. The law which looks upon a lucid interval as a shorter period of intermission between two attacks of insanity, and which regards intermission as a return to sanity, just as the intermission in an ague fit is a return to health, cannot regard the insane per-

[1] 1 L. R., Probate, 398.

[2] In White *v.* Wilson, 13 Ves. 87, Erskine, C., said: "Where the party has ever been subject to a commission or to any restraint permitted by law, even a domestic restraint clearly and plainly imposed upon him in consequence of undisputed insanity, the proof showing sanity is thrown upon him; on the other hand, where insanity has not been imputed by relations or friends, or even by common fame, the proof of insanity, which does not appear to have ever existed, is thrown upon the other side; which is not to be made out by rambling through the whole life of the party, but must be applied to the particular date of the transaction."

[3] Hall *v.* Warren, 9 Ves. 6111; Holyland Ex parte, 11 Ves. 11 Hadn *v.* Hays, 9 Penn. St. 151.

[4] Holyland Ex parte, 11 Ves. 11.

son with a lucid interval in any other light than as a person of sound mind.[1] As this is the case, the greatest caution is necessary in determining the actual existence of this state, and careful examination must be made, and very little reliance is to be placed upon the opinion of friends or relatives in such a case. Even in the commencement of insanity little is to be satisfactorily gathered from the stories of relatives who, in many instances, have most limited powers of observation, and are [299] very long before they can associate the idea of somewhat odd conduct with the idea of insanity in a person they have all along regarded as sane. That extra caution is required in the case of a lucid interval when the character of an act has to be determined, will be evident when we remember that as it is *ex hypothesi*, an intermission of short duration, it is most difficult to predicate when it will come to an end and what acts are influenced by the returning morbid conditions. It is also well to bear in mind that although an insane person during a lucid interval is to be regarded for all the purposes of law as sane, he must, for many obvious reasons, be regarded as a person very liable to go insane, and in that respect as mentally inferior to what he was before he suffered from the disease at all. The acts of such a person should be carefully looked at, just as the acts of one who is proved to have a strong hereditary taint of insanity would excite a suspicion of possible insanity if they resembled the acts ordinarily done by persons of unsound mind. Thus, we find that in criminal courts there is a reluctance to convict an individual who has committed a criminal act during a lucid interval, and this reluctance is worthy of the better name prudence. For, although an individual may, during such a remission of mental disease, commit an act for which he is really in strictness responsible, and although he may be at his trial in such a state of mind as to be capable of instructing solicitors and pleading, still, with the certainty of recurring insanity before them, the jury are right in not subjecting an individual to prison discipline, which might aggravate or confirm his malady, while the discipline and treatment of an asylum

[1] The American law is the same in this respect; Wright *v.* Lewis, 5 Rich, 212; Gangwere's Estate in re, 14 Penn. St. 417; Gombault *v.* Public Administrator, 4 Bradf. Sur. 226. See also Fulleck *v.* Allinson, 3 Hagg. 527; Clement *v.* Rhodes, 3 Add. 37.

might do something to make him a good citizen and a sane man. One other circumstance it is well to bear in mind in connection with this subject, and that is, the gradual enfeeblement of the mental powers as the disease progresses, so that each lucid interval which may make a little light in the darkness finds the individual weaker mentally than he was before. And as the changes in structure progress, the lucid intervals will become shorter and less marked, until a time comes when there are none of those second summers of reason. All these things are to be kept in mind by those who would recognize a lucid interval when it really exists, and who may have some influence, by means of their evidence, upon the legal relations of persons, whose desert lives are broken here and there by those little fertile spots, to the State and laws.

§ 397. **Distinction between Lucid Interval in Insanity and Lucid Interval in Delirium.**—In delirium, for the most part, the periods of apparent return to reason are real and unquestionable, while those which seem to occur in mania are delusive, the patient not having really recovered, being still under the influence of disease, as in the periods of more marked exacerbation.[1]

[1] Brogden *v.* Brown, 2 Add. 441. See also Coghlan's Case, 19 Ves. 508; 1 Dow P. C. 178; and see Cartwright *v.* Cartwright, 1 Phillim. 120; 3 Br. C. C. 444.

CHAPTER XXI.

FEIGNED INSANITY.

§ 398. **Want of Scientific Training of Medical Men has rendered the Detection of Feigned Insanity Difficult.**—[274]If the law has been slow to adapt itself to what may be regarded as the results of modern science, those persons who are the exponents of what the results of modern science are have themselves to blame. If the definition of legal irresponsibility is such that it is calculated to suffer the punishment of many who ought to be exempted from the consequences of their criminal acts, it is so in consequence of the thorough incompetence of many medical witnesses to distinguish between real and feigned insanity. To demand that the law should sail close to the wind of science, which seems at best to be a wavering draught or squall, is to demand too much. The Judges very properly decided, as it seems to us, that it was better to have too narrow than too broad a definition of legal insanity; that it was better for the interests of the community that some persons who might not in strictness be responsible for their acts, should suffer punishment for their misdemeanors, than that many, who were really responsible to the laws, should, through too wide a definition of insanity and the incompetence of those who in individual cases were summoned to say whether insanity was real or counterfeit, escape the merited punishment of their crimes. And the Judges were right. Until very recent times medical men were not in any way trained to a knowledge of insanity; and where members of the profession who might have obtained some reputation in other branches of the profession were placed in the witness box to give evidence as to the mental condition of a person accused of a crime, it can be easily un-

derstood that their evidence was most unsatisfactory. Even at the present day the precautions taken by medical educational institutions and examining boards, that those to whom they give degrees [275] and licenses should know something of insanity, are most defective. We are glad, however, that one or two of our largest and best conducted hospitals for the insane now give opportunities to medical men to become practically acquainted with the symptoms and treatment of mental disease. And a day may come when the word "expert," as applied to those who profess to be informed as to the important questions of medical psychology, may lose that tinge of irony which, in the eyes of lawyers, at present attaches to it. That the law has been slow to adapt itself to recent scientific knowledge in relation to mental disease, is due to the fact that the medical profession has not, as a whole, adopted the results of those investigations, and that at the present time the knowledge of insanity diffused among the ordinary ranks of the profession is thoroughly inadequate. Any one who has taken the trouble to examine the medical certificates, upon which, under the present law, lunatics are confined in asylums, must have been struck with the slovenliness and ignorance of those who filled up the printed form. In the first place, those medical gentlemen, in many cases, seem either to ignore the existence of a rubric—which directs them what to do—or to be unable, if they do read it, to understand its perfectly intelligible requisites; and, in the second place, the statement of the "facts indicating insanity observed by myself," or communicated by others is generally most unsatisfactory. One medical man gave as the only fact indicating insanity, observed by himself—"Called me a fool," while another, evidently ignorant that "to drive unicorn" means to drive a team of horses, in a particular way, stated that the individual "believed he had driven a unicorn." Can it be a matter for wonder then that many members of the medical profession have found much difficulty in distinguishing between insanity which is real and insanity which is assumed, or that lawyers have been in general very suspicious as to medical testimony, and unwilling to take it for what in some cases might be its real worth. When there are many false coins going about, a good shilling may now and again

be refused; and one is not to be blamed if he gives every sixpence "a ring" on the counter. The way to remove the stigma is, in the first place, to remove the justice of it! The best way for the medical profession to begin the reform is not to alter the law, but to see that its own members are in future better educated!

§ 399. **The Detection of Feigned Insanity.**—It has been said that experience teaches fools, but it seems to us scarcely a true saying. It requires wisdom to learn anything from experience. However that may be, it will always require much wisdom and much experience upon the part of the physician to discover whether certain symptoms are those of a real or a simulated insanity. It need not be pointed out that as the determination of this question depends upon a thorough knowledge of the disease, he alone is in a capable position to distinguish the real from the feigned disease, who is thoroughly acquainted with the symptoms of the true mental aberration. But further, it requires a good deal of experience of the history of imposition, as well as a shrewd knowledge of the motives which influence mankind. It is scarcely necessary to say that a medical man in examining an individual must bring all his common sense to bear upon the question, and he must consider the motives which would be likely to lead a man to feign, and if he is convinced that there are strong motives, then he will do well the more suspiciously to examine the symptoms. Schurmayer has, almost unnecessarily as it seems to us, given a statement to guide medical men in their suspicion of dissimulation. Men's experience of their fellows would guide them to suspicion of a party who had committed some act the punishment of which might be escaped by inducing a belief in the presence of mental disease. So if the individual had a distaste to any particular profession or occupation from the pursuit of which he might be excused, when his character is such as to lead to a disbelief in the veracity of his conduct,[1] or when it is impossible to discover any previous indication of physical or

[1] Heinroth Medizinische Zeichenlehre, Ausgabe von Danz Leipzig, 1812, p. 380.

mental disease,[1] all these circumstances would naturally put him on his guard and make him weigh every diagnostic symptom in a hair-balance.

§ 400. **The Difficulty of Detection.**—Some people make very light of simulated insanity, and seem to regard its detection as a very easy matter. Dr. Bucknill, an undoubted authority upon all questions connected with insanity, says: "How hard it is on the stage, and for a few minutes only, for a man to represent the manners of a sailor, a peasant, an old man, or any other characteristic manners, so that the deception shall be acknowledged complete! But the histrionic powers of the feigning maniac or melancholic must be kept up for days and weeks on the stretch in the representation of manners and modes of thought far more difficult to imitate than those which are usually the subjects of theatrical art. Dr. Rush is reported to have discriminated feigned from real insanity by the relative rapidity of the pulse: Dr. Knight and other writers have claimed the same power for the sense of smell. At the present day, the deposits in the urine would, we suppose, be appealed to. Much reliance, however, is not to be placed upon any one or even upon several of the physical signs of nervous disturbance. They have a scientific but scarcely a diagnostic value. They may serve to direct the inquiries of the physician, or even to confirm his opinion founded upon other data; but standing by themselves, they are of little importance in the diagnosis of insanity."[2] But in the comparison between the difficulty with which an actor assumes a stage character and the difficulty with which a malingerer must keep up the consistency of his feigned insanity, Dr. Bucknill seems to overlook some important particulars. The audience know the sailor is acting a part, that the rage of this man or the love of that is only stage-deep. They are looking for discrepancies. In the case of him who feigns insanity, this important element is wanting. But stage characters are judged of by the experience of mankind, and they would find it impossible to say

[1] Friedreich, Handbuch der gerichtlichen Psychologie, p. 155.
[2] Bucknill on the Diagnosis of Insanity.

whether the manners of a class with which they were unfamiliar were well or ill represented, and it is owing to this circumstance that the terrible stories of the "London Journal" and "Reynolds' Miscellany," which set forth in lurid lights the lives of the English aristocracy, are read with undoubting confidence by the lower classes of society. But there is no general experience of mania, and medical men, when they with their experience are brought to judge of the genuineness of a certain apparent disease, must rely to a great extent upon the inaccurate and garbled statements of those who are about the patient, which in nine cases out of ten tend rather to obscure and darken the whole matter than to elucidate and throw light upon it. But the fact is that there must be difficulty in many cases in saying whether a man is really insane or only assuming a disease under which he does not labor. Only a few weeks ago we had a conversation with the medical superintendent of a large asylum, who, speaking of a criminal lunatic who was under his care and who had been removed to the County Asylum from Broadmore some three months before, said: "I suspect that he is as sane as I am, but I cannot prove it yet." This man had, according to his belief, feigned insanity sufficiently well to be acquitted of the crime of which he was charged, to deceive the authorities at the criminal asylum, and even to defy his own ingenuity, although armed with suspicion for three months. But a very large number of cases might be referred to in which insanity has been successfully simulated, and Dr. Bucknill himself gives a very interesting case, in the work from which we have quoted, which shows that it is sometimes most difficult to say whether a man is simulating or is really affected by disease. "John Jakes was convicted at the Devon Easter Sessions, 1855, of pocket-picking. Previous convictions having been proved, he was sentenced to four years' penal servitude. On hearing the sentence, he fell down in the dock as if in a fit of apoplexy. When removed to the jail, he was found to be hemiplegic and apparently mindless. He, however, did some things which did not belong to dementia following apoplexy; for instance, he was designedly filthy, and even ate his own excrements. His insanity was certified by the surgeon of the jail and by a second medical man, and he was removed

to the asylum. Notwithstanding the medical certificates of his insanity, the convicting magistrates, who knew his character as a burglar and a criminal of great ability, thought that he was feigning. Warned by their caution, I examined the man carefully. He had all the symptoms of hemiplegia: the toe dragged in walking, the uncertain grasp of the hand, a slight drawing of the features, the tongue thrust to the paralyzed side—all these symptoms were present in a manner so true to nature, that if they were feigned, the representation was a consummate piece of acting founded upon accurate observation. In the asylum, the patient was not dirty: he was tranquil, and apparently demented: he had to be fed, to be dressed and to be undressed, to be led from place to place: he could not be made to speak: he slept well. On the night of the 17th of August, 1856, he effected his escape from the asylum in a manner which convinced the magistrates that their opinion of his simulation was just, and that he had succeeded in deceiving some four or five medical men. He converted the handle of a tin cup into a false key, wherewith he unlocked the window guard; through the window, he escaped by night into the garden; from thence he clambered over a door eight feet high, and afterwards over a wall of the same height. He got clear away, probably joined his old associates, and has never been heard of since. It is hard to say which is the least improbable, a representation of hemiplegia and dementia so perfect as to deceive several men forewarned against deception, or the escape of a really paralytic patient by the means described."[1]

§ 401. **Feigned Insanity compatible with Real Insanity.**—[276]It is well to remember that the greatest difficulty in the decision of the question as to whether an individual is feigning insanity or not, arises in consequence of the fact that many insane persons will, under similar circumstances, resort to precisely the same expedients as those who are sane. If a person who really is under the influence of an insane delusion sees that it is for his advantage that he

[1] Bucknill on the Diagnosis of Insanity. Some interesting particulars of successful simulation of insanity, which had deceived even medical men, came to light in the case of Reg. *v.* Ball, which was tried at the Lewes Winter Assize in Dec. 1856.

should be thought insane; if he is aware that the belief in his insanity will exempt him from the consequence of some foredone act, the mere existence of an insane delusion does not preclude the possibility of his feigning an insanity under which he does not labor. This fact seems to have been overlooked by almost all writers on the medical jurisprudence of insanity. That this circumstance complicates the question is evident. Many of the tests which are in ordinary circumstances applied to decide the question—as the inquiry respecting the beginning of the insanity, (the early symptoms of the disease being those in which feigners usually fail), the questions as to hereditary tendencies, as to previous attacks, and the like—are, to a great extent, rendered useless. That the delusions of many persons are modified by motives, much less powerful than the above-mentioned, as, for example, by the questions and laughter of a little knot of listeners, we have often observed, and have found, that even to enjoy the pleasure of being laughed at, the pleasure of attracting notice, persons with many extravagant delusions would upon occasion exaggerate and vary the statement of their unhealthy impressions. In most cases, however, in which a healthy mind, or one which looked at in reference to the ordinary minds of mankind, may be looked upon as healthy, undertakes the task of feigning insanity, the difficulty of detection is not great. Two things are necessary to ensure a correct conclusion—care and time. Time fights for truth!

§ 402. **Feigned Idiocy.**—Idiocy is a form of mental unsoundness very rarely assumed, in consequence of the facility with which its genuineness can be ascertained. The history of the individual, which can in these days be more easily traced than in times gone by, will, in all cases, show whether it is feigned or real. The form of the head is a symptom which cannot be feigned. No man by taking thought can take away that deformity any more than he can add a cubit to his stature. There are often other deformities [272] associated with idiocy, and for those who have to decide a question as to real or feigned insanity, it is most useful to remember that those symptoms only which are quite beyond the power of the individual are, as it were, the rock on which to

build their theory—for, after all, the answer to that question is a theory and nothing more—while the other facts, which must be had recourse to, are like the sand, and winds of doctrine may lay it in ruins!

§ 403. **Feigned Imbecility and its Detection.**—But there may be great mental weakness, and the form of the head may not be indicative of the defect. In such cases the imbecility is not congenital, but acquired. The history in such cases is of the greatest importance, and the supposed cause of the enfeeblement should be very carefully sought for. In such a case the impostor would probably prove too much, by assuring us that he had been in his present condition since his birth. The cause assigned, and the nature of the malady, will in most cases of imposture discover the trick by the inadequacy of the one to the other. It is to be borne in mind that it is in reference to the "outside" facts of the disease that errors will ordinarily be found. All the acts which get out of the dominion of will, and become automatic, will differ in the case of an impostor and in the case of a real imbecile. The history of the case, as showing his opportunities for becoming acquainted with the symptoms of the disease, should be carefully studied; and yet due weight should in each case be given to the force which unconscious imitation is known to exercise over a weak mind.

§ 404. **The physiognomical diagnosis** of expression is a very important point in all cases in which simulation of insanity is suspected; and skill in this department of the work of the medical jurist is only to be acquired by a long and careful experience—to be best learned, it seems to us, in the wards of our hospitals for the insane. The description of a "look" is difficult. To say that the imbecile has a dull, stupid, vacant look is true; that his manner is uneasy, that his temper is variable, and that sometimes the dead level of his mill-pond existence is broken by a little eruption of passion is likewise true. But the description would do for many other persons besides imbeciles. By careful watching, gleams of the smothered intelligence will be seen to shine through, or flash out of the impostor's face, and it seems to

us that an experiment by means of the introduction of some object likely to excite curiosity or wonder into the presence of the individual suspected of imposture, would often serve to [278]uncover the ambush intelligence.[1]

§ 405. **Shrewdness often Co-exists with Imbecility.**—In many forms of imbecility there is a mixture of folly and acuteness. Many of the stories told in Scotland of their village fools, or "naturals," proves this; and the ordinary test that while the real imbecile is shrewd or foolish irrespectively of prospective interest, the impostor is shrewd in all matters connected with his scheme and its success, and shows his folly and stupidity only in connection with matters of indifference, is, it appears to us, unsatisfactory.

§ 406. **Imbecility rarely Simulated.**—One thing seems somewhat certain, and that is, that this form of insanity is not often assumed, first on account of the fact that this amount of imbecility, even when really present, is not necessarily incompatible with responsibility; and, secondly, on account of the difficulty of impressing individuals with the idea of insanity and its existence in one who manifests many signs of intellectual activity. When this amount of unsoundness does occur, it is not unfrequently accompanied by sufficient self-control to enable the individual at certain times (when it suits himself) to appear perfectly sane. And when such an amount of self-government exists, the individual, whether laboring under mental defects or not, seems to be properly punished on account of a proved transgression.

§ 407. **Feigned Dementia and its Detection.**—Dementia may be, and sometimes is, simulated by aged persons. In most cases, however, it is not a sufficiently demonstrative form of insanity to find favor with impostors; and it is so imperfectly understood, and so commonly confounded with simple dotage, that its adoption is rare. The characteristic of senile dementia is a deficiency of mental excitement; there is a torpor of all the faculties; in it the mind is like an engine

[1] Dr. Laurent (Ann. d'Hyg. 1862, 2, 460,) has some important observations upon the subject of physiognomy in relation to feigned insanity.

working under defective pressure. One circumstance which has led to dementia being confounded with the defects of age is, that one of its symptoms is that memory loses hold of events near to the present in point of time, sooner than it does of those events which are more distant. Delusions which do come, fancies which take possession, are generally connected in some way with a substrate fact of the past life of the individual; and there is a gradual decay, which the impostor would find it impossible to simulate; indeed, one rule for the guidance of the medical jurist in all these cases might be:—Look always for gradual changes in cases of real disease; look for sudden transitions in cases where the will of the individual is attempting to take the place in the production of physical events—of the great slow laws of [279] nature. This is a good rule! The will jumps—the law of nature creeps! The gradual decay above alluded to is marked by the darkening of that glass through which the senses, at best, darkly see! The power of recognizing persons, places, and things goes, and there is no return. The mind lies in circumstances, like a waterlogged ship in the waves. *Sans* everything! Even in this stage of the disease a man might commit crime, or, in other words, might do harm to himself or others. But little or no difficulty is likely to arise from attempts to feign senile dementia in this its last stage. There is an actual repugnance in strong humanity to sink so low—to seem so weak. After death, Cæsar's clay may keep the wind from whistling through a chink, but not before. We find then, as a fact, that it is rather those forms of mental disease which arise from undue excitement that are chosen for imitation by impostors, than those which arise from defective development or diminished activity of the faculties. It is to be remembered, with reference to dementia and our diagnosis of it, that where it is not the result of some severe mental shock, it is the consequence of organic disease of the brain, which almost invariably, in time, reveals itself in paralysis. So time fights for truth here too.[1]

§ 408. **Feigned Mania and its Detection.**—There is a

[1] The case of John Jakes, Devon Easter Sessions, 1855, ante § 400, is interesting in this connection.

method in all madness! But the method which is in mania, and is the result of the regular laws of unhealthy action, differs widely from the method which is imposed upon the incoherence of simulated madness by thought. The very close observation of mental disease by one of a sufficiently powerful intellect thoroughly to understand and appreciate its manifestations, might lead to such a deceptive reproduction of a number of symptoms as to puzzle many individuals, not trained to distinguish between very fine shades of expression as indicative of varying springs of action. And the tendency which the human mind has to make real and earnest what may be begun in fun and frolic, or may be undertaken with the sole object of deceiving, is one thing which tends to complicate the investigation. Good acting will often give a shape to life. The story is told of Mrs. Siddons, that on one occasion after a successful representation of *Lady Macbeth*, she was found wandering about the passages which lie beneath and behind the stage, wringing her hands and muttering, "I can't get out,"—so does the ideal become the real! It is the history of the making of all things!

§ 409. **Experienced Observation will generally Detect Simulated Insanity.**—But it is to be remembered that those who have occasion to feign [280] insanity are not those who are qualified to give a faithful representation of the whole life of an individual under the influence of mental disease, and that their opportunities have not been such as to enable them to become intimately acquainted with the whole of the manifestations of the abnormal state. And, owing to the circumstances, the difficulty of feigning insanity so as to deceive a physician well acquainted with the disease is very great, so great, indeed, that Dr. Conolly affirms "that he can hardly imagine a case which would be proof against an efficient system of observation."[1]

§ 410. **Feigned Mania: Tendency to Overact.**—One observation which is of practical importance to those who are desirous of distinguishing the real from the imitated form of

[1] Inquiry concerning the Indications of Insanity, p. 467.

the disease is, that what the knowledge of the impostor lacks in extent, he invariably tries to compensate by the intensity of his acting. He overacts the few symptoms with which he is familiar, while he neglects many other symptoms that have considerable diagnostic value. Where, therefore, a considerable exacerbation of prominent symptoms occurs, in conjunction with the absence of less easily observed manifestations, it gives, at least a high probability of imposture. Dr. Bucknill has some good observations upon this point which are worth quoting. "The feigning madman," he says, "in all ages has been apt to fall into the error of believing that conduct utterly outrageous and absurd is the peculiar characteristic of insanity. The absurd conduct of the real madman does not indicate a total subversion of the intelligence; it is not utterly at variance with the reasoning processes; but it is consistent either with certain delusive ideas, or with a certain perverted state of the emotions. In the great majority of cases, feigned insanity is detected by the part being overacted to outrageousness and absurdity of conduct, and by the neglect of those changes in the emotions and propensities which form the more important part of real insanity. Sometimes mania is simulated—the man howls, raves, distorts his features and his postures, grovels on the ground or rushes about his room, and commits numberless acts of violence and destructiveness. If he has had the opportunity of observing a few cases of real insanity, and if he is a good mimic, he may succeed in inducing a person who only watches him for a few minutes to believe that he is in the presence of a case of acute mania; but if the case is watched for a few hours or days, the deception becomes apparent. No muscular endurance and no tenacity of purpose will enable the sane man to keep up the resemblance of acute mania: nature soon becomes exhausted, and the would-be patient rests, and at length sleeps. The constant agitation, accompanied by symptoms of febrile disturbance, by rapid pulse, foul tongue, dry and harsh palate, clammy skin, and the long-continued sleeplessness of acute mania, cannot be successfully imitated. The state of the skin alone will frequently be enough to unmask the pretender. If this is found to be healthy in feeling, and sweating from exertion of voluntary excitement and

effort, it will afford good ground for suspicion. If, after this, the patient is found to sleep soundly and composedly, there will be little doubt that the suspicion is correct."

§ 411. **Simulation of Chronic Mania.**—"Chronic mania," continues Dr. Bucknill, "may be imitated; and if this should be done by an accurate observer of its phenomena, who also happens to be an excellent mimic, it cannot be denied that the imitation may deceive the most skilful alienist. It is remarkable that two of the most perfect pictures of insanity presented to us in the plays of Shakespeare are instances of feigned madness—namely the madness of Hamlet, assumed to escape the machinations of his uncle, and that of Edgar in Lear, assumed to escape the persecutions of his brother. These inimitable representations of the phenomena of insanity are so perfect that in their perusal we are insensibly led to forget that they are feigned. In both instances, however, the deception was practiced by educated gentlemen; and on the authority of the great dramatic psychologist, it may perhaps be accepted that the phenomena of insanity may be feigned by a skilful actor like Hamlet so perfectly that no flaw can be detected in the representation. Fortunately for the credit of psychologists, insanity is rarely feigned except by ignorant and vulgar persons, who are quite unable to construct and act out a consistent system of disordered mind. It must be remembered that all the features of every case of insanity form a consistent whole which it requires as much intelligence to conceive and to imitate as it does to conceive and to imitate any dramatic character. The idea which the vulgar have of madness is of quite a different kind. They represent it as a monster, half man, half beast: the emotions they represent unchanged and human: the intellectual functions they represent entirely perverted, grovelling, bestial. They think that madness entirely alters the character of a man's perceptions and utterly destroys his judgment, so that he not only ploughs the shore and sows salt for seed, but that he cannot recognize his own son or avoid the destruction of his life. In more homely cases, it will be found that men feigning insanity pretend that they cannot read or write or count ten correctly, or tell the day of the week or how many

children they have: they answer every question wrongly, which a real lunatic, who could be made to understand the question and answer it at will, would certainly answer right."[1]

§ 412. **Further Rules for the Detection of Feigned Disease.**—Where, also, there is considerable variation of the symptoms in the presence of different individuals—*ex. gr.*, where in the presence of a medical man, known to be such, the symptoms are more carefully produced, while in the presence of others they are produced in such a rough-hewn shape, as is calculated to carry, through a witness, to the medical man, the presumption is in favor of feigning. In most cases effort can be detected in all the assumed ravings—the effort of argument, for it is always the impostor's desire to prove to persons, who are present, and may be observers, that he is really mad; and, owing to this circumstance, the endeavor is not unlikely to fail: for persons really insane are, not unfrequently, in the presence of a stranger, calmer and more quiet than at other times. There is always some assertion in the ravings of one who only feigns insanity. The manifestations are all prominent. Many discrepancies are to be found in assumed insanity. Mania is, really, the brain working under such high pressure that its ordinary action is interfered with. But there is no dulling of any of the faculties. Friends are almost invariably recognized; names, dates, occurrences, and places are remembered. The senses seem to be somewhat more acute than they were in times past. The impostor not unfrequently endeavors [281] to make assurance doubly sure, and introduces a few symptomps of dementia into the stratagem, and so he is discovered! In simulated insanity, the memory is often found to be defective: recent events with-

[1] Bucknill's Diagnosis of Insanity. M. Orfila says that as there exists in the world a very false idea of madmen, the one who simulates insanity after this idea will perform at every instant contradictory and false acts. Thus he will pretend not to remember his past actions; he will not recognize those whom he knows very well; he will not make a single correct reply to questions that are addressed to him. His features will not have the expression of such a violent condition; he cannot for so long a time prevent himself from sleeping; he will play the fool, particularly when he thinks himself observed; finally, his pretended malady will not have developed itself until he feared the pursuit of justice; it will not have been preceded by that originality of character, by those marked symptoms of moral disorder, which are observable in the majority of cases of insanity. M. d. Leg. tome i., p. 400, Paris, 1848.

which the individual has been connected seem to be entirely forgotten, the impression of the malingerer being that silence is a stronghold. The real maniac almost invariably remembers all the events with which he was concerned, although his disease may cause considerable distortion of some of the facts. Through the madman's delusions and manifestations, there runs a thread which gives a sort of order and method even to the chaos of his thought: through the manifestations of him who would feign insanity, this order is wanting. It is like the difference between a building which Time, even while she beautified from her rouge-pot with lichens, tears down with slow, inexorable fingers, and a building which the malice of mankind has razed to the ground and left not one stone upon another. The one has the order which a God-made chaos must have: it is pregnant with an order which will be born—the other is a chaos aforethought. In the vagaries of the madman, there is one invariable recurrence to the main drift of the delusion: in the impostor's delusions, there is an increasing changeableness. There is an earnestness in the madman: he believes what he says, for the most part. The earnestness in the man who imitates is only to produce a certain impression upon his audience. He has no affection for the shape of his delusion: he will alter it much and often to bring it more nearly to correspond with what he considers best suited to attain the end he has in view. In most cases, a careful observer might trace a distinction corresponding to the above explanation in the mode of manifestation. The one, whose delusions are objectless, whose erroneous beliefs are ends in themselves, is unhesitating in their expression—his utterance is usually rapid, and his incoherence trips merrily from his tongue: the other, whose delusions are buoys to which he clings to save him from the waves of circumstance, whose erroneous beliefs are means to an end, takes time—he has to consider whether this will do under the circumstances: his style differs from that of the madman—he hesitates, and his incoherence has the appearance of being studied. All these circumstances are calculated to show where certain manifestations have their roots—in the sad truth, disease; or in the sad untruth, a lie.

§ 413. **The State of the Affections to be considered.**—[282]Not unfrequently much light will be thrown on the question of feigned or unfeigned (?) by the state of the affections and desires of the individual. Every thought a man thinks is shaped and fashioned in a mould of feeling. Thought is, as it were, the shape of a vessel; and feeling, as it were, the figuring and embossing, or painting, of the same. Thought, the skeleton; and feelings, the flesh and blood of a body. Now, in mania many of the most prominent features which marked the character are lost. As magicians could change gold to lead, so does this magician, disease, change love to hatred. Very often those persons that were loved best while the individual was in health, are hated worst when the individual is diseased. If suspicion is on the wing, it alights upon some intimate friend or near relation—home-ties seem changed from blessings to curses, and a former affection seems to be reason good for hostility and war. There is no more promising symptom of a remission of the disease than a return of the rivers of the heart to their old courses. The man who would feign insanity invariably shows much animosity, but it is usually directed not against those who love him, and now weep for him: he sees disadvantage in alienatting affection, so his wrath is directed against some one who formerly injured him. If the madman has a delusion concerning a conspiracy, his wife, or children, or friends, will be looked upon as the conspirators, and loathed in consequence. If the sane man sees reason to feign such a delusion, other persons will usually be regarded in the light of his persecutors. But not merely are the affections diverted from their objects in mania, but many things cut into a man's heart by habit seem to be erased. A man or woman of the most scrupulously pure and refined habits will, under the influence of this disease, become insensible to the common decencies of life. Words and actions utterly strange to the individual's whole life and character are the ordinary expressions of their insane vitality. All those actions which are most filthy and horrible have been, and will be again and again, made use of with the view of inducing a belief in the genuineness of assumed insanity; but the entire change of

character under the influence of the disease from what it was in health is not likely to be counterfeited.

§ 414. **Physical Tests.**—It is said that in mania the pulse is usually more frequent than in health; but although it is reported that, owing to this circumstance alone Dr. Rush was convinced of the unfeignedness of the insanity in a certain case, we would not be inclined to place [283] implicit reliance upon this symptom. The sphygmograph might write a man down an impostor. We have already, in another connection, alluded to the importance of physiognomical diagnosis, and we would only add that each disease has a distinct face-symptom, an invariable type of expression, running through the transient shades, which are dependent upon an ever-varying train of thought. The impostor can't really feign that. In mania, too, there is generally discoverable a slight febrile action, and a peculiar odor of the skin.

§ 415. **Sleeplessness an Indication of Disease.**—The want of sleep is a symptom which is useful in the diagnosis of genuine mania. The impostor cannot stave off that enemy long. His exertions and feigned excitement, and the anxiety as to the success of his scheme, all weary him, and after a day or two at most, he will fall into a deep, quiet sleep. The maniac on the other hand passes days, and sometimes weeks, without any apparent necessity for sleep; and when sleep does come, it is restless and unhealthy sleep. The shutting of the doors of sense allows you to look into the heart, as it were. The restlessness of health with a purpose is very easily distinguished from the purposeless and animal-like motions of disease. The madman will show the same indifference with regard to food that he does with regard to sleep: the appetite of the sane man will often betray him.

§ 416. **Insensibility to Drugs a Test.**—The insensibility of individuals laboring under mania to certain drugs, such as opium, is a test of some value. The dose which would send an impostor to sleep, however determined to resist its influence, would have little or no effect upon a person really suffering from this disease. The same remark applies to cer-

tain other medicines, as purgatives and emetics. It requires a larger dose of tartar emetic to produce its depressant effects upon a madman than it does upon a sane person. But not only is the body insensible to the ordinary effects of certain drugs, but some of the senses appear to be insensible in such a high degree to the ordinary effects of over-stimulation. It is said that the madman can, eagle-like, look full in the sun's face, and thus insensibility, in certain cases, to cold is a well-marked peculiarity.

§ 417. **The Early Symptoms to be Considered.**—The genesis of mania ought, in all doubtful cases, to be carefully inquired into. The preliminary symptoms of a genuine attack of mania are not likely to be simulated. Feigned mania begins suddenly. Where the insanity is real, many instances of strange and, at the time, unaccountable conduct will be remembered. The inquiry as to the occurrence of the disease should also extend to [284]circumstances which might have predisposed to its invasion. The habits of the individual, the health or disease of other members of the family, the inherited or acquired peculiarities of constitution, the previous tendencies of the individual and the moral and physical circumstances which surround him, should be made the subject of diligent and intelligent inquiry. The irritability of temper of the real maniac differs from the grand, showy outbursts of the impostor. This is, however, a symptom of less importance, and it is somewhat easy of imitation. The periodicity of the attacks which has been remarked in real mania will not occur in the feigned disease.

§ 418. **Feigned Monomania.**—It is much more difficult to feign partial insanity than to feign what is called mania. In proportion to the difficulty is the rarity with which it is simulated. In partial intellectual mania, many of the symptoms are present which characterize the general disease, yet in most cases they are not so obtrusive, and a more careful examination has to be conducted, before the fact of the insanity discloses itself. The same prejudices, however, have possession of the mind, the same irritability of temper, the same unfounded likings and dislikings, affections and aver-

sions, the same sleepless restlessness and insensibility to impressions, and the operations of drugs, are to be found in this form of disease. The pretended monomaniac will, however, parade those symptoms, while in the individual really suffering from partial mania there will be a tendency and effort to conceal them from observation. He is generally quiet and reserved, but will become querulous and sometimes violent in an argument. "A real monomaniac," says Marc, "is strongly prejudiced in favour of his opinions—the slightest contradiction excites his temper; while the simulator readily overlooks this essential point in his part, if the contradiction is skilfully managed. The taciturnity peculiar to the real subjects of monomania frequently leaves simulators at fault, since the complaints of the latter were sure of being seen and heard, and their repugnance to dwelling in solitude is not met with, or at least not in the same degree in the others."

§ 419. **Feigned Epilepsy.**—Epilepsy can be and is feigned. Beggars live by fits, and one detected in the act confessed that he had been taught the trick by his father, who studied the symptoms in a book.[1] Would there, we wonder, be primogeniture in the property in a fit? would it go to the heir or next of kin? A case of well-simulated epilepsy is mentioned in Legrand de Saulle.[2] To show that there is sometimes a difficulty in distinguishing between the simulated attack and the real disease, we may mention a case that came under the notice of Esquirol, who, during one of those conferences which took place during the clinique, boasted that no cunning could deceive his power of diagnosing a case of assumed epilepsy. One of the pupils shortly afterwards fell suddenly, was convulsed, and presented all the other symptoms of severe epilepsy. Esquirol, watching with deep anxiety, turned to those around, saying, "Ah, poor boy, he is an epileptic." The boy sprang to his feet, crying, "You see, my master, that we *can* simulate an attack of epilepsy."[3] That simulator was Calmiel, the greatest authority upon general paralysis, and still, although old, the physician of Charenton. Sailors who

[1] See Journal of Mental Science, vol. ii., p. 357. [2] Page 442.
[3] Legrand de Saulle, op. cit. p. 358.

prefer deck-work to going aloft often feign epilepsy. An examination of [285] the hands during the seizure will generally show whether it is real or not. The thumb of the real epileptic is invariably held down into the palm by the other fingers. A practiced ear ought to be able to distinguish the cry which upon all occasions accompanies the seizure. "A late German trial," says Wharton without giving any authority for his statement,[1] "brings before us a state of facts well worthy of being considered by those concerned in religious and moral education. The parents of two young girls, one eleven and the other fifteen, claimed public relief on the ground that the latter were subject to epileptic fits. The patients were for months subject to medical scrutiny, and were received into an hospital where, during intermission, as well as of paroxysm, they were under constant observation. The elder, in particular, was affected by the disease in its worst shape, being prostrated by convulsive attacks of extraordinary violence, which afterwards left her in a state of entire exhaustion. Suspicion, however, was aroused as to the entire sincerity of the patients, and one of the hospital officers, against the vehement protestations of the medical attendants, threatened the eldest (sic) of the two with severe discipline in case she should have another fit. The attempt was successful. No fit was repeated; and the children confessed that partly to excite sympathy, partly to obtain money, the disease had been simulated."

§ 420. **Simulated Disease may lead to Real Disease.**— We have seen that vice leads to insanity, and experience teaches us that the peculiar vice of simulation not unfrequently, and as if in practical justice, is the means of inducing an accession of the disease feigned. A careful consideration of the circumstances will make this explicable enough. Occasionally pretended epilepsy has passed into or been merged in the real.[2] Many acts which have been planned by

[1] Mental Unsoundness and Psychological Law, § 445.

[2] Dr. Browne on the Mental Condition of Epileptics in Crichton Institution—Reports, 1853, p. 12. Dr. Laurent also points out the tendency which feigned insanity has to become real, and gives a case in which this actually took place, which came under his own notice. Ann. d'Hyg. 1866, 2, 460. There is an interesting essay on monomania induced by imitation in the first volume of the American Journal of Insanity, p. 116.

will, pass out of the domain of will. You can make a habit, but it masters you when it is made. It has been asserted, with some reason, that the marvellous power which some insane persons have of simulating diseases may be due not only to the perversion of muscular volition obtained by habitual exercise, but also to an exaltation of the powers of co-ordination due to the diseased condition.

§ 421. **Feigned Melancholia.**—It is somewhat curious that the attempts made to simulate melancholia are not more frequent. It is the form of insanity in which it is most difficult to distinguish the real from the counterfeit. The possession by the mind of one fixed idea or delusion, and the profound and brooding melancholy which are characteristic of this disease, are, without great difficulty, reproduced even by one possessed of only small histrionic ability, and requires no such efforts as the faithful rendering of an attack of mania. Here it is evident that the marks of effort, of planned disorder, of occasional signs of healthy mental action and ordinary human interests, will not suffice as marks by which to know the true from the false. But the reason for its non-adoption by enterprising impostors seems to be that it is not sufficiently demonstrative. Their circumstances are such that they must force the knowledge of their insanity upon the people about them: they cannot afford to wait until it is discovered, and it is somewhat lucky that this is so, for it would in many cases be most difficult to prove the deception. In many of the forms of partial intellectual mania, [286] as we have before shown, irresponsibility should not be admitted; and in cases in which the delusion was connected with the crime of which the individual is accused, or where the melancholy is so profound as to deprive the accused of any power of choice; in such cases a careful observation by medical men, extending over a considerable portion of time with a view of marking the progress which the disease, if unfeigned, will make in one direction or another, would not fail to discover an artifice, if it exists, or to establish the fact of real disease. In all cases, the family and individual history, if it can be ascertained, will afford some presumption which will be of use in the investigation.

§ 422. **Feigned Moral Mania.**—In moral mania, which, according to Hoffbauer, "may exist uncomplicated with mental delusion, and is, in fact, only a kind of mental exaltation (tollheit,) a state in which the reason has lost its empire over the passions and actions by which they are manifested to such a degree that the individual can neither express the former nor abstain from the latter"—in this kind of insanity, where the chief ground for believing in the existence of mental unsoundness is the character of the acts committed, and very often nothing more than the character of the single act of which the criminal is accused, the difficulty of distinguishing what is real from what is feigned is exceedingly great. Up to the present time courts of law have been very unwilling to admit moral mania, as proved only by the quality of the act of which the individual is accused, as a good plea in criminal cases; and it has done so upon what seems good grounds. That a criminal act may be the first symptom of insanity is true, but that the brutal quality of the act should be admitted as sufficient proof that it resulted from an insane impulse is absurd. The science of evidence may be superseded in time to come, but while it is still looked upon as a science, and still regarded as the only guide in the decision of all questions of criminality and responsibility, not to say, what would be true, all questions in life, to allow the act itself, with which an individual is charged, to be an all-sufficient proof of the insanity of the accused, is impossible. It may be true that the man is mad, as in many other cases it is true that fatal blows have been struck in self-defence, but, as in the latter case, if the self-defence could not be proved by facts other than the deed, so in the former case the insanity cannot for a moment be permitted to be proved by the atrocity of the crime alone. The result of the [287]admission of such a doctrine would be to add to the atrocity of every crime; and an individual who wished to commit murder on a neighbor would, to secure his immunity from punishment, cut a few more throats. It is, however, in many cases, unlikely from other circumstances, that a sane man could commit a crime without any motive: it is certain that no sane man does anything without a motive, and, although the motive may not be good, it is invariably rational. Where, therefore, these cir-

cumstances can be and are brought out, as in a case where an individual in a good position in society, in circumstances which would lead most men to live easily contented, suddenly kills another, never having seen him nor communicated with him before, by whose death he is in no way advantaged, and from the consequences of whose death he sees no probability of escape; in such a case, even although there may be no delusion, the presumption of insanity is very strong, and upon suitable medical testimony the individual ought to be held irresponsible. Such cases, however, will not fall under the notice of him who is studying feigned insanity, and if capability of judging of motive is looked at as the only guide in deciding all questions of responsibility, although an occasional error may be committed, as in all other inquiries, few persons will escape from punishment by simulating moral mania, unless they are very vigorously seconded in their efforts by injudicious medical gentlemen.

CHAPTER XXII.

CONCEALED INSANITY.

§ 423. **Concealed Insanity.**—[288] Insane persons are very often influenced by motives just as the sane are. In many instances, the motives which influence them are utterly mistaken, and sometimes have no objective existence; but at other times they are influenced in precisely the same way that persons in possession of their reason are. If you laugh at a lunatic on account of his delusion, you may not succeed in eradicating the erroneous belief, but you may succeed in making him conceal its existence. On a similar principle to that expressed in the proverb which says that "a sin hidden is half forgiven," it might be thought that "a delusion concealed was half cured." But although in some cases the concealment would indicate a progress towards recovery, in others the secrecy is a part of the disease. But not only will the fear of ridicule induce insane people to feign sanity, but other fears, such as that of being put in an asylum, or being deprived of the management of their affairs, will influence these persons to conceal those symptoms which they have learned that others account indications of insanity. Of course, the maniac will rave, the idiot will drivel, and the dement will stand and stare. In such cases, there can be no concealment. It is only in those cases where the disease is less virulent that any efforts at concealment will be made, and in such cases efforts may be made with so much ingenuity and ability as to deceive many persons who are intimately acquainted with the characteristics of mental disease. Even experts have been hoodwinked by clever lunatics.

§ 424. **Delusions are often Concealed.**—That this would not be difficult to do in many cases is evident. Where the

insanity consists in some delusion which is not likely to influence the ordinary conduct of the individual, it is not difficult for [289] the insane person to conceal the erroneous belief, or to deny his belief in it when he is charged with it. One case has been communicated to us which illustrates this difficulty. A man was placed in a lunatic asylum. He claimed an interview with the superintendent, and when it was granted, he said with perfect calmness, "Doctor, I am not mad: I believe in omens. I had a dream in which I thought I saw some one who told me to try and convert a neighbor. I thought that this dream ought to influence my conduct, and I endeavored by every fair means to convince my neighbor of the truths of religion. I confess I believe in omens, but am I to be shut up in a lunatic asylum for that? Dr. Johnson and Sir Walter Scott did the same." For three months this man remained in the institution, and during all that time he conducted himself like a rational being, and showed no other symptom of insanity than what appears in the above sentences. At the end of that time he was discharged, for although the medical superintendent was convinced in his own mind of the mental unsoundness, he could have given no sufficient reason for his belief; and the belief in omens and the prophetic character of dreams is no more a sign of insanity than the belief in spiritualism is. The man was discharged, and in six months he returned to the asylum in a state of acute mania.

§ 425. **Difficulty of Distinguishing between Delusions and Sane Beliefs.**—Besides, it is very often difficult to discover whether a belief is a delusion or not. A pauper lunatic was a short time ago admitted into an asylum, and during the visit of the medical superintendent this patient said he had been in Australia at the gold-diggings. The medical man pointed this out to his assistant as a delusion, because he diagnosed the existence of incipient general paralysis. His assistant, however, who had seen the relieving officer, said it was a fact that the man had been at the diggings. The superintendent was, however, dissatisfied, from the way the man spoke of the "gold," the "fine gold," and the quantity of gold. He still regarded it as a delusion; and when,

shortly afterwards, the patient was visited by his wife, it was ascertained that he never had been out of England. This shows that there is much difficulty in distinguishing between true beliefs and delusions. So minute was this patient's account of his Australian experiences, that it had deceived the medical man who had signed the certificate, the relieving officer, and the medical assistant at the asylum in which he was confined.

§ 426. **Insane Reticence will Resist even Cross-examination.**—[290]In many cases which have come into courts of law the utmost difficulty has been felt in determining whether lunacy does really exist or not. A remarkable case of this kind was referred to by Erskine in the Hadfield case. A person who had been confined in a lunatic asylum prosecuted his brother and the keeper of the asylum for false imprisonment and duress. Erskine was informed that the man was undoubdtedly insane, but he was not told the particular form which the malady assumed. The prosecutor, himself a witness in support of the indictment, was put into the witness box and examined, and when Erskine came to cross-examine him, he found his evidence clear, distinct, collected, and rational. He tried to discover some alienation of mind, but during a cross-examination, conducted with all the skill and sagacity of which he was master, for nearly an hour he was completely foiled: the answers were perfectly rational—there was not the slightest sign of mental alienation. A gentleman, however, who had been accidentally detained, came into court, and whispered in Erskine's ear that the witness thought he was the Saviour of mankind. On receiving the hint, Erskine made a low bow to the witness, addressed him in terms of great reverence, and respectfully begged to apologize for the unceremonious manner in which he had treated a person of his sacred character, and called him by the name of Christ. The man immediately said: "Thou hast spoken truly, I am the Christ." And Pinel relates a similar case.

§ 427. **Case of Concealed Insanity.**—A case in which the insane person was most anxious to be considered of sound mind came before our courts of law, and is interesting

and instructive in more ways than one. The prisoner was indicted for shooting at his wife with intent to murder her. He was defended by counsel who set up the defence of insanity. The prisoner, however, objected to such a defence, asserting that he was not insane, and he was allowed by the Judge to suggest questions to be put by his Lordship to the witnesses for the prosecution to negative the supposition that he was insane; and the Judge also, at the request of the prisoner, allowed additional evidence to be called on his behalf for the same purpose. They, however, failed in showing that the defence was an incorrect one: on the contrary, their evidence tended to establish it more clearly, and the prisoner was acquitted on the ground of insanity in spite of himself.[1]

§ 428. **Other Cases of Counterfeited Sanity.**—Thus, Lord Eldon related a case in which, after repeated conferences and much conversation with a lunatic, he was convinced of the soundness of his understanding, and prevailed on Lord Thurlow to supersede the commission. The lunatic calling immediately afterwards on his counsel to thank him for his exertions, convinced him in five minutes that the worst thing he could have done for his client was to get rid of the commission.[2] And Mr. Haslam has given the case of an Essex farmer who so well counterfeited sanity as to procure his liberation from the asylum in which he was confined, but who was almost immediately sent back; and he gives the following account of the conduct of this individual: "At the examination he managed himself with admirable address. He spoke of the treatment he had received from the persons under whose care [291]he was at that time placed as most kind and fatherly; he also expressed himself as particularly fortunate in being under my care, and bestowed many handsome compliments upon my skill in treating this disorder, and expatiated on my sagacity in perceiving the slightest tinges of insanity. When I wished him to explain certain parts of his conduct, and particularly some extravagant opinions respecting certain persons and circumstances, he disclaimed any knowledge of such circumstances, and felt himself hurt that

[1] Reg. v. Pearce, 9 Car & P. 667. [2] Ex parte Holyland, 11 Ves. Rep. 11.

my mind should have been poisoned so much to his prejudice. He displayed equal subtlety on three other occasions when I visited him; although by protracting the conversation he let fall sufficient to satisfy my mind that he was a madman. In a short time he was removed to the hospital, where he expressed great satisfaction in being under my inspection. The private madhouse, which he had formerly so much commended, now became the subject of severe animadversion: he said that he had there been treated with extreme cruelty, that he had been nearly starved and eaten up by vermin of various descriptions. On inquiring of some convalescent patients I found (as I had suspected) that I was as much the subject of abuse when absent as any of his supposed enemies, although to my face he was courteous and respectful. More than a month had elapsed since his admission into the hospital before he pressed me for my opinion, probably confiding in his address, and hoping to deceive me. At length he appealed to my decision, and urged the correctness of his conduct during confinement as an argument for his liberation. But when I informed him of circumstances he supposed me unacquainted with, and assured him that he was a proper subject for the asylum which he then inhabited, he suddenly poured forth a torrent of abuse, talked in the most incoherent manner, insisted on the truth of what he formerly denied, breathed vengeance against his family and friends, and became so outrageous that it became necessary to order him to be strictly confined. He continued in a state of unceasing fury for more than fifteen months."[1]

§ 429. **The French Method of Discovering the Existence of Concealed Insanity.**—With the view of arriving at a correct conclusion with regard to the existence of insanity or not, the French have recourse to what they call the interrogatory, the continued observation, and the inquest. Method in such matters is, of course, of the greatest use, and it has [293] been said by some writers that the efficacy of the French system is proved by the admirable way in which it works.

1 Haslam on Madness, 53.

§ 430. **The interrogatory** embraces all that will be considered in the chapter which will be devoted to the examination of lunatics. And it is instituted with a view to obtaining all the information which can be had from the individual himself, or from any one who has had opportunities of becoming acquainted with his past history, and of observing his conduct. When the examination of the lunatic or interrogatory fails to establish the existence of insanity, and not unfrequently this will be the case where moral mania or imbecility alone are present, the French have recourse to the second method—

§ 431. **Continued Observation.**—The importance of a careful observation of a person supposed to be insane extending over a long course of time can scarcely be exaggerated. At any visit of a medical man the patient may be on his guard and may manage to conceal his insanity, but very few insane persons can continue to act the part of sanity for a long time. They will inevitably be off their guard now and then, and the true mental symptoms will manifest themselves. Observation when the patient is unconscious that he is watched will often throw light upon actual mental disease which is most carefully hidden when he is in the presence of others. It seems as in the case of criminals who cannot, even when assisted by the discipline of a prison, remain "good" for long, but must have their "outbreaks," so it is with the lunatic who would conceal his delusion. The probability is that he raves when he imagines himself unobserved. Opportunities of observation should therefore be secured and care taken to note all his habitual acts which may be within the range of the influence of delusion, as it is in those acts which are automatic that the morbidity is most likely to be observed. We have in another place pointed out the importance of examining the writings of those who are suspected of lunacy.[1]

§ 432. **The inquest,** according to the French method, im-

[1] In the State of Maine (U. S.) it is customary in any case in which insanity is suspected, and where it is likely to be set up as a defence in the trial of a criminal charge, to commit the accused to asylum while awaiting trial. See Am. Journal of Insanity, Oct. 1872.

plies a consideration of the past history of the case, and bringing the facts derived from others as to the possible causes of the disease to bear upon the case. In this place we need only to say that all these means which are formulated by Georget and other French writers in the way we have indicated have been all along appreciated by English and American writers, and [293] that, perhaps, a more philosophical classification of the facts to be observed will suggest itself to many readers. Little difficulty can arise if an examination such as we have recommended in another place is conducted with the care and intelligence which is necessary to the success of all scientific research. But after the cases which have been alluded to in this chapter, it is evident that in many instances one or two interviews with a lunatic will not be sufficient, and that in some a long course of observation will be requisite to establish the fact of the existence of mental disease.[1]

[1] In Young *v.* Dendy, 1 L. R. Pro. 344, the testatrix seems to have concealed her insanity from many persons who were about her during her life, and her sanity seems first to have been seriously doubted from the contents of some written papers which were discovered after her death.

CHAPTER I.

INSANITY, CAPACITY, AND RESPONSIBILITY.

§ 1. **Introduction.**—There are few questions which have excited more general interest, few which have been more publicly discussed, and few which have, in general society, in medical literature, and in the newspaper press, received such unsatisfactory answers as those which are connected with the medical jurisprudence of insanity. The question, however, as to the responsibility of the insane for criminal acts is the one which has drawn out the greatest amount of miscellaneous answering. Whenever a crime of unusual atrocity has been committed, and whenever there is no other defence, the plea of insanity has been set up, and whether it has been accepted by the jury as a sufficient answer to the charge or not, it has been adopted by certain members of the public, and that for very obvious reasons. The public is led by sympathies rather than by reason. When it at first hears of the perpetration of some ghastly crime, all its sympathies are with the victim. If it had its way, the nearest tree would be called into requisition by angry Judge Lynch. But the law wisely steps in and protects accused persons, and says vengeance must only fall upon the guilty. To discover the really guilty person, time must elapse, and inquiry must be made. Meanwhile, the victim is forgotten, and sympathy is with the criminal. The public reasons, nothing we can do to him, will bring the dead man back. Then, too, the very calmness of Justice makes it seem cruel in the eyes of the people; and they are only too glad to adopt any reason which may seem to have some truth in it, and which may secure leniency to the criminal. For that reason, some persons are always sure to accept insanity as an explanation of the crime and as a reason for the exercise of lenity.

§ 2. **The question of capital punishment** is very often associated with the question of the responsibility of the insane. If capital punishment were done away with, we would certainly hear less of the insanity of accused persons; but it is altogether wrong to allow one's views of the expediency or rightness of punishment by death to influence one's views of the mental condition of any person accused of crime, or to suffer one's opinions of what the law ought to be to affect one's obedience to the law as it exists. The wide-spread feeling of the inutility of capital punishment is doubtless an indication that the country is in a condition to do without punishment by death, as a means of enforcing obedience to its laws. It is a true, although apparently paradoxical, maxim in relation to legislation, that whenever a people hates punishment the most, it can do with the least. Were crimes of violence common, folk would be content with the gallows and the gibbet; as it is, the lives of honest men being in but little danger, they can afford to sympathize with criminals, and lay the axe at the root of the gallows-tree. But one's distaste to capital punishment never can be a reason for saying that every criminal is insane.

§ 3. **The atrocity of the Crime in connection with Insanity.**—It is not at all uncommon in society to ascribe insanity to any individual who perpetrates a crime unusually shocking. It seems to be a theory that a sane man may murder one or two people, but that any one who murders half a dozen must be mad. It does some credit to the persons who entertain this theory that they have such a high view of humanity as to regard anything particularly atrocious as inhuman and unnatural, and that they must resort to an hypothesis of insanity to account for anything that is singularly horrible in conduct. But it is clear that this would scarcely do for a test. Were it once adopted, it would become common for those who wanted to kill one person to kill a very large number, in order that they might enjoy an immunity from punishment on the ground of insanity. Running-a-muck would be encouraged by such legislation. But a careful examination of all the cases of horrible murders which have occurred in times past will convince any one that the

mere atrocity of the crime is no indication of the mental condition of the criminal, and, that the ordinary society phrase, which it glibly applies to every crime which is more than usually revolting, "It must have been a madman who did it," is very far from the truth, and has been the cause of a considerable amount of misunderstanding as to the real nature of responsibility. In many eyes, human life is not sacred, and there are innumerable instances in which it has been sacrificed with the utmost recklessness. In some eyes, the only life that is sacred is their own; and to save themselves, or to procure for themselves some joy or advantage, they are willing to sacrifice the lives of others, and these feelings, although to a high-minded man they seem abominable, unnatural, and insane, are nevertheless in these persons natural and healthy instincts. It is to protect society from such persons that laws exist.

§ 4. **Reasons why the question of Responsibility has not received a Satisfactory Answer.**—It has seemed necessary to us to allude to one or two preliminary subjects with the view of showing why the questions as to the legal relation of the insane have received such unsatisfactory answers, notwithstanding the great amount of confused and promiscuous discussion. The strong feeling against capital punishment, a crude notion that any act very revolting is the result of mental disease, which has been fostered by the knowledge that many acts of terrible cruelty have been committed by the insane, a very wayward and somewhat uninformed outcry upon the part of some members of the medical profession that the laws were unjust, and the general ignorance of the people of the real meaning of law, the real reason of punishment, and of exemption from punishment, have contributed to the misunderstanding of the whole subject, and to its somewhat unsatisfactory condition, in so far as general and medical literature is concerned at the present time. After the most careful consideration, after the most diligent inquiry into the reasons that have been urged for and against the rules of law which are at present in existence, after giving due weight to the arguments adduced and the opinions propounded by some of the ablest members of the medical profession who are

antagonists of the present legal tests of sane citizenship and punishability, we are constrained to admit that we can see no injustice in the present state of the law, that in every respect it is abreast of contemporary science, and that, with due explanations, no better tests could, at the present time, be laid down in respect to the civil capacity and criminal responsibility of the insane.

§ 5. **The necessity for Legislative Enactments as to the Insane.**—It has never been disputed that there was a necessity for class legislation with reference to the insane. The laws are laid down to guide the conduct of men amongst men. Much wisdom and experience has gone to their making, and although fault is always to be found with them, although, from time to time, as circumstances change, as men's characters alter, changes and amendments are demanded in the statute book, still it is at all times necessary to compel obedience to the existing laws. But this compulsion of obedience to the laws, which is a part of the law, takes for granted individuals who understand what the command of the supreme power is, and who, while understanding that command, are in a position in which they can give or withhold obedience. All commands must imply a person who understands what is ordered, and who can do or who can refrain from doing what is required of him. It would be absurd to tell a wind to blow or rain to fall. Such an order in a human mouth would not be a command. So the word would be equally inapplicable to an order issued by one man to another in a tongue he did not understand and without gestures which he could appreciate, or by one man to another to do something which was impossible, such as to put out the stars, or remove a mountain. In all these cases, although in one aspect—the aspect of him who utters—these may seem commands, in the other aspect—that of him who hears—they are nothing of the sort. So, laws which are simply commands are only addressed to those members of a community who can understand what they allow or forbid, and who, joined with this knowledge, have the power to give or to withhold obedience to these orders. Now, as there is a class of persons in the community who are not in a position at the same

Simpson *v.* Gardiner's Trustees, 11 S. 1049, § 377.
Skidmore *v.* Romaine, 2 Bradf. 122, § 27.
Slater *v.* Wilcox, 57 Barb. (N. Y.) 604, § 490.
Sloan *v.* Maxwell, 2 Green Ch. 572, § 23, 293.
Smith *v.* Campbell, 2 Irvine, 1, § 140, 256.
Smith's Case, 2 Irvine, 1, § 228.
Smith *v.* Com., 1 Duvall, 224, § 520.
v. Kramer, 1 Am. Law Reg. 353, § 525.
v. Tebbitt, 1 L. R. Pro. 398, § 24, 149, 395, 518.
Snook *v.* Watts, 11 Beav. 105, § 295.
Snow *v.* Benton, 28 Ill. 306, § 23, 525.
Somers *v.* Pumphrey, 24 Ind. 231, § 27.
Somes *v.* Skinner, 16 Mass. 348, § 91.
Sparrow's Case, Bell's Notes, 6, § 256.
Spittle *v.* Walton, 40 L. J. Ch. 368; 11 L. R. Eq. 240, § 439, 462.
St. Louis Mut. Ins. Co. *v.* Graves, 6 Bush, (Ky.) 290, § 258, 261, 505.
Stackhouse *v.* Horton, 15 N. J. Ch. (2 McCarter) 202, § 148, 151, 295.
Stanton *v.* Wetherax, 16 Barb. 259, § 148.
Staples *v.* Wellington, 58 Me. 453, § 26, 518.
Starrett *v.* Douglass, 2 Yates, 48, § 365.
State *v.* Bartlett, 43 N. H. 224, § 520*a*.
v. Brandon, 8 Jones, 463, § 258.
v. Brinyea, 5 Ala. 241, § 520.
v. Christmas, 6 Jones, (North Car.) 471, § 525.
v. Crawford, 14 Am. L. Reg. 21, § 520, and addenda.
v. Cross, 27 Mo. 332, § 368.
v. De Wolf, 8 Conn. 93. § 440.
v. Felter, 25 Iowa, 67; 32 Iowa, 49, § 258, 520.
v. Fore, Warton on Insanity, 179, § 257.
v. Gardiner, Wright's Ohio Rep. 392, § 12, 258.
v. Hundley, 46 Mo. 414, § 372, 520.
v. Huting, 21 Mo. 464, § 12.
v. John, 8 Ired. 330, § 368.
v. Jones, 50 N. H. 369, § 16, 520.
v. Klinger, 43 Mo. 127, § 520.
v. Lawrence, 57 Me. 574, § 12, 258, 520.
v. Marler, 2 Ala. 43, § 520.
v. O'Brien, 7 R. I. 336, § 508.
v. Pike, 49 N. H. 399, § 15, 491, 495, 506.
v. Pratt, 34 Vt. 323, § 29.
v. Reddick, 7 Kans. 143, § 395.
v. Sewell, 3 Jones, N. C. 245, § 518.
v. Spencer, 1 Zabriskie, 196, § 12, 133, 258, 520
v. Starling, 6 Jones, N. C. 367, § 520.
v. Wier, § 15. Jones *v.* State, § 15, 16.
v. Windsor, 5 Harrington (Del.) 512, § 140, 258, 501.
Stead *v.* Anderson, 4 C. B. 806, § 155.
Stedham *v.* Stedham, 32 Ala. 525, § 367.

Stevens *v.* The State, 31 Ind. 485, § 88, 258, 520
v. Vancleve, 4 Wash. C. C. 262, § 23, 293, 517, 518.
Stewart *v.* Lispenard, 26 Wend. 313, § 293.
Stormont *v.* Waterloo Life Casualty Ass. Co., 1 F. & F. 22, § 261.
Stubbs *v.* Houston, 33 Ala. 555, § 94, 296.
Sullivan *v.* Sullivan, 2 Hagg. Const. 246, § 82.
Sutton *v.* Sadler, 3 C. B., N. S. 87; 26 L. J., C. P. 284, § 26, 143, 517.
Symes *v.* Green, 1 S. & T. 401, § 26, 143.

Taff *v.* Hosmer, 14 Mich. 309, § 517.
Tarbuck *v.* Bispham, 2 Mees. & W. 6, § 27, 91, 92.
Temple *v.* Temple, 1 Hen. & Munf. 476, § 363, 514.
Terry *v.* Buffington, 11 Ga. 337, § 23, 293.
v. Life Insurance Co., 1 Dillon. C. Ct. U. S. 403, § 261.
Thompson's Case, Shaw, 129, § 370, 524.
Thompson *v.* Kyner, 65 Pa. St. 368, § 94, 517.
v. Quimby, 2 Bradf. Sur. 449, § 24, 151.
v. Thompson, 21 Barb. 107, § 24, 26, 151.
Thomson *v.* Leech, 3 Salk. 301, § 18, 82, 90. 154.
Tingley *v.* Cowgill, 48 Mo. 291, § 498, 501.
Titlow *v.* Titlow, 54 Pa. St. 216, § 295.
Tomkins *v.* Tomkins, 1 Bailey, 92, § 293.
Towart *v.* Sellars, 5 Dow. P. C. 231–247, § 153.
Townshend *v.* Townshend, 7 Gill. 10, § 151, 506.
Tracy's Peerage, 10 Cl. & Fin. 191, § 486.
Trumbull *v.* Gibbons, 2 Zabriskie, 117, 593, § 517.
Tullis *v.* Kidd, 12 Ala. 684, § 505.
Tullock *v.* Arbuthnot, 25 January, 1759, 1 Lord Kames' Eq, 106, § 153.
Turner *v.* Cheesman, 15 N. J. Ch. 243, § 23, 506, 517.
v. Hand, 3 Wall. Jr. 120, § 24, 151.
v. Meyers, 1 Hagg. Con. Rep. 414, § 25, 154.

U. S. *v.* Clarke, 2 Cranch C. C. R. 158, § 368.
v. Holmes. 1 Clifford, 98, § 140, 258.
v. McGlue, 1 Curtis, 1, § 368, 501.
v. Shults, 6 McLean, 121, § 12, 87.

Van Alst *v.* Hunter, 5 Johns. Ch. 158, § 23, 152, 298.
Van Guysling *v.* Van Kuren, 35 N. Y. 70. § 23.
Van Huss *v.* Rainbolt, 2 Coldwell, 139, § 298.
Van Zandt *v.* Mut. Benefit Life Ins. Co., May's Law of Ins. 371, § 261.
Vance *v.* Commonwealth, 2 Va. Cas. 123, § 133, 258.
Vreeland *v.* McClelland, 1 Bradf. Sur. 394, § 297.

Waddell *v.* Waddell's Trustees, 7 Dunlop, 605, § 295.
Wadsworth *v.* Sherman, 14 Barb. 169, § 92.
Walker *v.* Macadam, 13 Faculty Col. 548, § 524.
v. McAdams, 1 Dow, 177, § 29.

Walton *v.* Shelley, 1 T. R. 300, § 303.
Waring *v.* Waring, 6 Moore P. C. C. 341; 12 Jur. 947, § 24, 148, 149, 393, 458.
Washburn *v.* Cuddihy, 8 Gray, 430, § 508
Waters *v.* Howlett, 3 Hagg. 790, § 387.
v. Taylor, 2 Ves. & B. 299, § 156.
Watson *v.* Donnelly, 28 Barb. 658, § 94.
v. Noble's Trustees, 4 Shaw, 200; 2 Wils. & St. App. 648, § 153, 300.
v. Watson, 2 B. Monr. 74, § 298.
Watts' Case, 2 Den. C. C. 20, § 8.
Weaver *v.* Ward, Hobart, 138, § 155, 364.
Wheeler *v.* Alderson, 3 Hagg. 574, § 298, 365, 393, 506.
Whelps' Case, 1 Broun, 378, § 16, 140.
White *v.* Ballantyne, 1 Sh. App. 472, § 153, 300
v. Driver, 1 Phillim. 84, § 393.
v. Palmer, 4 Mass. 147, § 92.
v. The British Empire Ass. Co., 38 L. J. Ch. 53, § 261.
v. Wilson, 13 Ves. 87, § 395.
Whitenack *v.* Stryker, 1 Green Chan. 8, § 23, 295, 518.
Wilkinson *v.* Pearson, 23 Pa. St. 117, § 506.
Williams *v.* Goude, 1 Hagg. 589–591, § 144.
Willoughby *v.* Moulton. 47 N. H. 204, § 362, 363.
Wilson *v.* People, 4 Parker's Criminal Reports, 619, § 505.
Windham *In re*, 31 L. Jour. Chan. 720, § 95.
Wood and Hodson, Dennison C. C. 254, § 434.
v. Wood, 1 Phill. 357, § 149.
Woodbury *v.* Obear, 7 Gray, 467, 471, § 501.
Wogan *v.* Small, 11 Serg. & R. 141, § 506.
Wray *v.* Hutchinson, 2 Myl. & K. 235–238, § 156.
Wrench *v.* Murray, 3 Curteis, 623, § 297.
Wrestler *v.* Custer, 46 Pa. St. 502, § 517.
Wrexham *v.* Hudleston, 1 Swans, 514, note, § 156.
Wright *v.* Tatham, 5 Clark & Fin. 670; 4 Bing, N. C. 489, § 506.
v. Lewis, 5 Rich. 212, § 396.
Wyatt *v.* Ingram, 3 Hagg. 466, § 23, 70, 82, 94, 293.
Wylie's Case, 3 Irvine, 218, § 373.
Wynn *v.* Allard, 5 Watts & S. 525, § 364.

Yates *v.* Boen, 2 Str. 1104, § 26, 91, 154.
Yates' Case, Arkley's Rep. 238, § 229, 256.
Yooloo's Case, (Special Rep.) § 295.
Young *v.* Dendy, 1 L. R. Pro. 344, § 432, 472.

which has been bestowed upon them by certain zealous members of the medical profession was somewhat absurd.

§ 8. **Responsibility of the Insane—Former English Rules.**—The effort of the Judges has at all times been to discover whether an individual who was brought before them charged with a criminal offence was really amenable to the laws or not, whether at the time he committed the act he knew what he was about, whether he knew that the act he was perpetrating was forbidden, and whether he had the power to refrain from doing it. If he did not know what he was about, if he did not know that the act done was contrary to the law of God or of the land, if he had not the power of volition over his own acts, he was insane in the eye of the law and irresponsible. With the view to the ascertainment of these facts, they laid down certain tests, some of which have scarcely been adequate to the end in view, but all of them infinitely better than any which the most ingenious medical men have proposed to substitute for them. Lord Coke classified madmen, and described four kinds of men who might be looked upon as *non compos mentis:* "1. An *ideota,* which from his nativitie by a perpetual infirmity is *non compos mentis;* 2. Hee that by sickness, grief, or other accident, wholly loseth his memory and understanding; 3. A lunatic that hath sometimes his understanding and sometimes not, *aliquando gaudel lucidis intervallis,* and therefore he is called *non compos mentis* so long as he hath not understanding; 4. He that by his own vitious act for a time depriveth himself of his memory and understanding, as he that is drunken."[1] It is not argued that Lord Coke's classification is without defect. If it pretended to be a complete definition of the legal tests of insanity it would be exceedingly defective, for in the first place the first is unintelligible without a definition of the word idiot; the second is a description which was never realized in fact, as no lunatic ever was entirely deprived of memory and understanding; and third, he refers only to that form of partial insanity which is marked by lucid intervals, and not to that with which we are all familiar, which may be called by any name one pleases, but which is characterized by delusions

[1] 2 Coke on Littleton, 247 *a.*

upon one or more subjects while the individual thus affected is rational in relation to other matters. This latter came to be recognized in time, and we find Lord Hale saying: "There is a partial insanity and a total insanity. The former is either in respect to things *quoad hoc vel illud insanire*. Some persons that have a competent use of reason in respect of some subjects are yet under a particular dementia in respect of some particular discourses, subjects, or applications, or else it is partial in respect of degrees, and this is the condition of very many, especially melancholy persons, who, for the most part, discover their defect in excessive fears and griefs, and yet are not wholly destitute of the use of reason, and this partial insanity seems not to excuse them in the committing of any offence for its matter capital; for doubtless most persons that are felons of themselves and others, are under a degree of partial insanity when they commit these offences. It is very difficult to define the invisible line that divides perfect and partial insanity, but it must rest upon circumstances duly to be weighed by judge and jury, lest, on the one side, there be a kind of inhumanity towards the defects of human nature, or, on the other side, too great an indulgence given to great crimes."[1] And we have Baron Alderson saying that a man may be *non compos mentis quoad hoc*, and yet not *non compos mentis* altogether.[2] But this rule as to partial insanity has been universally acted upon in English Courts. Thus, in the trial of Arnold who shot at Lord Onslow in 1723, Tracy, J., remarked: "It is not every kind of frantic humour, or something unaccountable in a man's actions, that points him out to be such a madman as is exempt from punishment: it must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing no more than an infant, than a brute, or a wild beast. Such a one is never the object of punishment."[3] It is true, as we have pointed out above with reference to Lord Coke's description that no lunatic ever was entirely deprived of his understanding and memory, or in the words which Mr. Erskine used in 1800, when defending Hadfield, who was charged with shooting at the King, "No such madness ever existed in the world." But although the

[1] Pleas of the Crown, 30. [2] 2 Hill's Case, Den. C. C. 260.
[3] 8 Hargrave's St. Tr. 322; 16 Howell's St. Trials, 764.

earlier decisions seem scarcely to have recognized the real nature of insanity, and although the Judges in consequence failed to give what we can now regard as perfectly adequate tests of the insanity which would exempt from punishment, they have all gone upon the implied principle which is fundamental in our criminal law, viz., that the individual whom it is sought to bring within the operation of the law "has mental capacity, is a free agent, and possesses the power of electing to abstain from what is forbidden rather than suffer the consequences of offending."[1] After the Hadfield case, to which we have just alluded, the test that there must be entire deprivation of memory and understanding seems to have been abandoned, and delusion seems to have been adopted as a test of exculpating insanity in its stead. In the course of his speech for the prisoner, Mr. Erskine, after rejecting the old test, on the ground that no insane man ever was without all remembrance of what is past, and all power of judging of what is present, said in all the cases that have filled Westminster Hall with complicated considerations, "the insane persons had not only had the most perfect knowledge and recollection of all the relations they stood in towards others, and of the acts and circumstances of their lives, but had in general been remarkable for subtility and acuteness, and that delusion of which the criminal act in question was the immediate unqualified offspring, was the kind of insanity which should rightly exempt from punishment. Delusion, therefore, where there is no frenzy or raving madness is the true character of insanity." There is a good deal which might be said in favor of making delusion the test of insanity, and it has been adopted by some writers as at least an alternative test.[2] One of our modern and most able philosophical writers has made belief the very fundamental concept. He holds that knowing is not before it, and that knowledge without believing it to be knowledge would not be knowledge.[3] With a very little ingenuity, it might be shown that as insanity can only be manifested through mind, and as any change in the mental status must produce a change in the mental beliefs

[1] Broom's Com. 869; 880.

[2] Shelford's Treatise of the Law concerning Lunatics, etc., 2d ed. pp. 41, 42.

[3] Herbert Spencer's Principles of Psychology, 13.

which accompany and are part of these conditions, that consequently all insanity was manifested in morbid beliefs, and that consequently delusion was a good test of insanity. But it obtained no permanent place as a test of insanity in courts of law; and in the trial of Bellingham,[1] it was decided that "although a man might be incapable of conducting his own affairs, he may still be answerable for his criminal acts if he possessed a mind capable of distinguishing right from wrong." Again, Lord Lyndhurst laid it down that "in order to be irresponsible, the accused must have been ignorant that his act was a crime against the laws of God and nature."[2] These opinions were almost invariably acted upon by the Judges, and found their way into the text-books. Thus, Mr. Chitty[3] says: "The substantial question presented to the jury is whether, at the time the alleged criminal act was committed, the prisoner was capable of judging between right and wrong, and did not *then* know he was commiiting an offence against the law of God and of nature." And Russell, in his standard work, gives the inability to distinguish right from wrong as the characteristic of that kind of insanity which exempts from punishment of crime.[4]

§ 9. **Rules of Law considered.**—All these rules of law are open to one objection, and that is, that they have not sufficiently included reference to the volitional character of crime as distinguished from the act which is the direct result of disease. It is clear that a man might be aware that if a thing was forbidden, he might know that it was contrary to the law, and yet he might not be in a position to refrain from the act. There can be little doubt that that is a cogent objection against all these rules. We cannot think, however, that these rules were unjust in practice. We feel convinced that in most cases the jury did not understand the word "know" in its separate, philosophical sense, as distinguished from desires and will, but regarded the knowledge of the law which was required to constitute responsibility in law, as knowledge which is passing over into act, and in that was inclusive of the volitional element which is necessary to the

[1] See 1 Collinson on Lunacy, 657. [2] Rex v. Offord, 5 Car. & P. 168.
[3] Med. Jurisprudence, 354. [4] Crimes and Misdemeanors, 12.

time to know the law and voluntarily do it, or refrain from doing it, it is necessary to recognize the fact that the laws as addressed to the community are not applicable to them, and hence it arises that exceptional legislation is necessary for this class of persons, or persons who are called insane. There has been some confusion introduced into this question by the use of the word insane, and for ourselves we should have preferred a definition of disability and irresponsibility, without regard to the cause by which such was produced. But with the explanation that the term insane, as used in law, does not include all those who are insane in fact, but only those who are not entitled to perform certain acts of citizenship, and those who are not punishable in respect of any crime they may commit—an explanation which has been repeatedly overlooked—no evil can arise from the use of the term insane as applicable to that class, to which the laws are not applicable, and for whom it is necessary to legislate specially.

§ 6. **Laws with regard to Lunatics.**—It being seen that certain special legislation was necessary, it became necessary to consider what these laws were. First, it was perceived that every man has a right to his personal liberty so long as he uses that liberty in a way which does not deprive his neighbors or fellow-men of a like enjoyment of personal freedom. In this place, it is unnecessary to consider the real fundamental principle upon which all law is founded, and which justifies all deprivation of freedom. It has been argued ably by the late Mr. Mill, and more recently, and not less ably, by Mr. Fitzjames Stephen; but it is not with the foundation but with the facts of law that we have here to do. The principle which is enunciated above, entitled the State to interfere with the liberty of insane persons who were dangerous to themselves or others, and hence it became usual to confine insane persons in places where they might be prevented from doing such injury, and where, at the same time, they might, by care and treatment, be brought to that condition of health which would again entitle them to the enjoyment of all the rights of a citizen. In old times, when the checks of the law were less careful than they are at present, these asylums or retreats, in which insane persons were

incarcerated by their friends, were sometimes made the instruments of private ends of injustice, and sometimes lent themselves as the means of a plot which had the satisfaction of private vengeance, pride, jealousy, or avarice, for its end. One of these is described in Smollett's novel, Sir Launcelot Greaves. But those days are gone by. The law has not only made it necessary that two medical men should certify that the person who is about to be incarcerated is of unsound mind and a fit person to be detained, but has instituted a Board of Inspectors, (Commissioners,) whose duty it is to visit all such establishments and to listen to the complaints of any person who may think he is unjustly detained, and who have the power, in the event of any contravention of such obvious law and statute enactment as the detention of a person of sound mind, to deprive the proprietor of such asylum of his license, by which alone he is warranted in receiving lunatics for profit into his house. Besides, the law has provided for the care and treatment of those persons whose friends are not in a position to send them to one of those private asylums which are kept for profit, by the erection and maintenance of large pauper asylums for the various boroughs and counties; and these, from the excellence of their management, from the humanity which characterizes their treatment, from the scientific work which is done in them, and from the large and increasing percentage of cures effected in them, are institutions in which the country may well feel pride. But the question of the compulsory detention of lunatics in asylums or hospitals does not really fall within the scope of our present undertaking. The law which regulates the admission of persons into asylums, their detention in and their discharge from asylums, as well as the duties of the Commissioners in Lunacy, and many other matters connected therewith, is embodied in various statutes, and to these, and the works which contain and comment upon them, the reader must be referred.[1] The questions with

[1] The Lunacy Acts by Danby P. Fry. London: 1864. Archbold's Law relative to Pauper Lunatics. London: 1854. Elmer's Practice in Lunacy. London: 1871. Aston's Law of Pauper Lunacy. 1849. Phillips' Law concerning Lunatics, etc. London: 1858. Sabbon & Browne's Handbook of Law and Lunacy. London: 1872. Winslow's Law of Lunacy. London: 1873.

which we have in this work more particularly to do, are those which are connected with the enjoyment of civil privileges or with the immunity from punishment in the event of an act being done, or a crime being committed by a person of unsound mind. A man makes a will and dies, and his relations who are not mentioned in the testament, and who would have profited in case of an intestacy, assert that the testator was mad, and therefore unable to make a will. A man with property is profuse in his expenditure, and those who would profit if he was a miser, maintain that he is insane, and therefore unable to manage his affairs, and request that his hands be tied by the red-tape of the law, and make an effort to have a committee of his person and estates appointed. A man is murdered, and the only person who saw it done is a person who is regarded by some as an imbecile, yet the prosecution tender him as a witness. An act which in the case of a sane man would be a crime is committed, and the question arises as to whether the individual is sane or insane; whether, under the law as it at present stands, the person committing the crime is liable to suffer punishment for the act committed by him, or is to be exempted on the ground of unsoundness of mind? These questions, which are evidently, in individual cases, of paramount importance, and which very frequently arise in practice, indicate the necessity of arriving at some thorough answer to the question—What is this insanity which incapacitates a man from making a will, from managing his own affairs, and which, in case he commits a crime, will protect him from the ordinary consequences of such an act? These, then, are the questions with which we have to do in this place. We will consider the last first, as it is the question concerning the answer to which there has been most difference of opinion.

§ 7. **Responsibility for Crime considered—Foreign Rules of Law.**—It may be well before entering on the statement or the discussion of the law of England in regard to the responsibility for criminal acts, to refer to the law of one or two other countries in reference to this matter. In Scotland, where the whole of the questions of criminal law have received intelligent and philosophical attention, it is

held that insanity is an absolute defence if proved.[1] But the insanity which will prove an absolute defence is to be ascertained by the same rules which have been laid down in England.[2] In France, the article of the penal code which bears upon this subject is: "There can be no crime nor offence if the accused was in a state of madness at the time of the act." In Germany, the latest penal code has laid it down that "an act is not punishable when the person at the time of doing it was in a state of unconsciousness or of disease of mind by which a free determination of will was excluded." And the revised statutes of New York enact, that "no act done by a person in a state of insanity can be punished as an offence." Although some of these rules have been praised as incomparably better than that which is laid down in England, these praises have generally come from medical men who have failed to understand the subject, and are for the most part quite beside the mark. The German definition of irresponsibility is the only one which indicates what the law regards as the nature of insanity, and that view differs in no particular from that which is entertained in England. To know whether the criterion of France or of America is less narrow or better founded than that of this country, we would require to know what the law regards as insanity or madness in these countries. It would be by no means an incorrect statement of the law of England to say that insane persons are irresponsible for criminal acts and incapable of civil ones, but the difficulty arises in endeavoring to ascertain the precise meaning of the word insane, who are included and who are excluded from responsibility and capacity by the term, and precisely the same difficulty arises in connection with the use of the same word in the French Code and the New York Statutes. The real meaning of these sentences can only be discovered by an examination of the cases which have been decided under them, and by the tests which the Judges who have had to administer these laws have laid down. Such an examination proves that in no particular does the law of either of these countries differ from our own, and that the praise

[1] 1 Hume, 41. And see Macdonald's Criminal Law of Scotland, p. 15.

[2] Per Lord Justice-Clerk Hope, in the Lord Advocate v. Gibson (High Court) 23d Dec. 1844, 2 Broun's Justiciary Repts. 332.

the question at issue. He did not expressly deny, however, that he so considered himself, but seemed disposed to leave it to be inferred from particular things in which he resembled Jesus Christ, as in his poverty, in his going about to do good, and in the persecution he suffered. The jury, not thinking it safe to convict the defendant on Jones' testimony, acquitted him, and the Court signified its approval of the verdict." Dr. Ray seems to think that there were sufficient comfirmatory circumstances in this case to warrant the jury in believing the whole of the evidence of Jones, and in finding a different verdict. We cannot, however, agree with Dr. Ray, who seems to have overlooked the fact, which he himself states, that Schwartz was indicted for assaulting with *intent* to kill, and that none of the corroborating circumstances, as proved, went to show any intention in the matter; and further, that the delusions of Jones with reference to persecution were not remote from the subject of his examination. We cannot but think that the verdict was a correct one.

§ 455. **Evidence of Competency.**—One circumstance is worthy of being remembered, and that is, that failings may lean to virtue's side—that a man may have a morbid desire to speak truth, just as others have a morbid propensity to lie. Such a fact shows the necessity of a thorough knowledge of each case by competent individuals, in order to ascertain the real value of the testimony in any individual instance in which the question of the credibility of the evidence of a person of unsound mind is raised. Such a knowledge, and the corroborative evidence of competent witnesses as to the trustworthiness of the insane witness, would, it seems to us, remove many of the objections which might be raised against its acceptance in courts of law.

§ 456. **The Value of the Evidence of Persons laboring under Mania.**—Where mania, properly so called, is present, the question with which we have to do in this place can scarcely arise. We have already considered the effect of a lucid interval upon the evidence [311]given of events which took place while the person testifying was still insane. In another place, we have considered the influence that partial

moral mania may have upon the evidence of an individual, especially when it assumes the form of mendacity. That a propensity to steal should not invalidate the evidence of the thief may seem reasonable; but in all kinds of moral mania, although many do merit the name of "partial," as being manifested only in relation to one class of acts, there is more or less a loss of moral tone. No vice can be continued even under the influence of disease without deteriorating the individual. Diseases are in league! Where moral mania has become habitual in relation to many classes of acts which would call forth approbation or disapprobation in others, the competence of the individual to bear witness in courts of law is reduced to a minimum. The shrewdness and intelligence so often manifested by persons laboring under general moral mania is apt to blind many persons to this fact. But even in these cases the absolute certainty of punishment in case of detection in untruth, and a very high degree of probability of detection, would do much to make a witness speak truth. But the rack is discarded in favor of cross-examination; and wherever the feelings of the insane witness are in any way involved, the result of the reception of his or her evidence is likely to be most unsatisfactory.

§ 457. **General Question of the Relation between Insanity and Testimony considered.**—Although the testimony of monomaniacs is no longer excluded, until very recently their incapacity to testify was regarded as a matter concerning which no doubt could be entertained, and the reason alleged for this opinion was the impossibility of calculating with accuracy the extent and influence of any delusion upon the general condition of the mind.[1] It would be as unreasonable to exclude the consideration of all motives because there is no animometer for spirits. It has been said with an approach to truth that a monomaniac "seems much in the condition of a lunatic who is in [312]a perpetual lucid interval on all subjects save one."[2] Much light, however, was thrown upon the subject by the case of Reg. *v.* Hill;[3] and

[1] Roscoe Crim. Evidence, 4th ed., by Power, 123.

[2] Best on Evidence, 5th ed., p. 209. See also evidence of Dr. Hill in Reg. v. Hill, 2 Den. P. C. C. 254.

[3] 2 Den. C. C. 254.

the recent conviction of William Wilson and John Hodson upon the evidence of an insane witness shows that juries are more inclined to act upon the principles which were there laid down than they have hitherto shown themselves to be.

§ 458. **The Case of Regina v. Hill.**—In the case of Regina *v.* Samuel Hill, the accused was an attendant in charge of a ward in a lunatic asylum. He was indicted for the manslaughter of Moses James Barnes, one of the patients under his care. The prisoner was tried before Coleridge, J., assisted by Cresswell. J., at the Central Criminal Court. He was convicted; but a question was reserved for the opinion of the Court as to the propriety of having admitted a witness of the name of Richard Donelly—who was a patient in Mr. Armstrong's lunatic asylum at Camberwell—on the part of the prosecution. Some evidence was gone into as to the competency of Donelly's testimony, and one witness stated that "Donelly labours under the delusion that he has a number of spirits about him which are continually talking to him. That is his only delusion: he has never been free from it to my knowledge since I have known him." Two medical witnesses deposed that, in their belief, Donelly was quite capable of giving an "account of any transaction that happened before his eyes." When Donelly was called, he was examined by the prisoner's counsel before he was sworn. In the course of this preliminary examination he said: "I am fully aware that I have a spirit, and 20,000 of them; they are not all mine. I must inquire—I can where I am—I know which are mine. Those ascend from my stomach to my head, and also those in my ears; I don't know how many they are. The flesh creates spirits by the palpitation of the nerves and the 'rheumatics;' all are now in my body and around my head; they speak to me incessantly, particularly at night. That spirits are immortal, I am taught by my religion from my childhood. No matter how faith goes: all live after my death, those which belong to me and those which do not. Satan lives after my death, so does the living God." He also said: "They speak to me constantly; they are now speaking to me; they are not separate from me; they [313]are round me, speaking to me now; but I can't be a spirit, for I am

flesh and blood. They can go in and out through walls and places which I cannot. I go to the grave; they live hereafter, unless, indeed, I've a gift different from my father and mother, that I don't know. After death my spirit will ascend to heaven or remain in purgatory. I can prove purgatory; I am a Roman Catholic; I attend Moorfield's, Chelsea Chapel, and many other chapels round London; I believe purgatory; I was taught that in my childhood and infancy; I know what it is to take an oath; my Catechism taught me from my infancy when it is lawful to swear; it is when God's honour, our own or our neighbour's good require it; when man swears, he does it in justifying his neighbour on a prayer-book or obligation. My ability evades while I am speaking, for the spirit ascends to my head; when I swear I appeal to the Almighty; it is perjury the breaking of a lawful oath, or taking an unlawful one; he that does it will go to hell for eternity." He was then sworn, and gave a perfectly connected and rational account of the transaction which he reported himself to have witnessed. He was not certain as to the day of the week on which the circumstances he spoke of took place, and on cross-examination said, "These creatures insist upon it it was Tuesday night, and I think it was Monday." Whereupon he was asked, "Is what you have told us what the spirits told you, or what you recollect without the spirits?" And he said, "No, the spirits assist me in speaking of the date. I thought it was Monday, and they told me it was Christmas-eve—Tuesday; but I was an eye-witness, an ocular witness, to the fall to the ground." The question for the Court of Criminal Appeal was—Richard Donelly's competency as a witness. The accused having been convicted, the case was argued before Lord Campbell, C. J. Coleridge, and Talfourd, J. J., and Alderson and Platt, B. B. The conviction was upheld. Lord Campbell, in delivering his judgment, said: "The question is important, and has not yet been solemnly decided after argument; but I have no doubt that the rule was properly laid down by Parke, B., in the case which was tried before him, and that it is for the Judge to say whether the insane person has the sense of religion in his mind, and whether he understands the nature and sanction of an oath, and then the jury are to decide on

the credibility and weight of his evidence. * * * A man may, in one sense, be *non compos*, and yet be aware of the [314] nature and sanction of an oath. In the particular case before the Court, I think the Judge was right in admitting the witness: I should have certainly done so myself. * * * It has been argued that any particular delusion, commonly called monomania, makes a man inadmissible. This would be extremely inconvenient in many cases in the proof either of guilt or innocence: it might also cause serious difficulties in the management of lunatic asylums. I am, therefore, of opinion that the Judge must in all cases determine the competency, and the jury the credibility. Before he is sworn, the insane person may be cross-examined, and witnesses called to prove circumstances which might show him to be inadmissible; but in the absence of such proof, he is *prima facie* admissible, and the jury must attach what weight they think fit to his testimony." Talfourd, J., said: "It would be very disastrous if mere delusions were held to exclude a witness. Some of the greatest and wisest of mankind have had particular delusions."[1]

§ 459. **As to Cause of Error in all Testimony.**—In almost every respect, the decision of the Court of Criminal Appeal is satisfactory. One thing can, it seems to us, be learned from the evidence given by Donelly, and that is, the tendency which many monomaniacs have of parading their delusions. The real feelings of an orator are only known to those who have spoken to an audience. There is something added to the thought by the presence of many of one's fellows, and the level prose rises into eloquence. Lunatics very often seem to partake of this feeling of the orator; and when they are relating their delusions, they are not unfrequently carried beyond the actual depth of their own morbid impressions, and the real delusion is eked out by ordinary voluntary imagination. This is a cause of error even in the

[1] See Waring *v.* Waring, 6 Moore's P. C. C , p. 341. In this connection, the following cases may be consulted: Reg. *v.* Eriswell, 3 T. R. 720–1; Currie *v.* Child, 3 Campb. 283. See also Chapman *v.* Graves, 2 Campb. 333 n.; Adams *v.* Kerr. 1 Bos. & P. 360; Cuncliffe *v.* Sefton, 2 East, 183; and Bernet *v.* Taylor, 9 Ves. 381; Rex *v.* Morley, quoted in Reg. *v.* Hill.

evidence of the best witnesses; but it complicates the question considerably when it is found in connection with real mental aberration. It is another proof that the evidence of a monomaniac may often be received even when the disease is manifested by the most extravagant delusions.

§ 460. **The Value of the Testimony of Melancholics.**—The principles already enunciated, and the rules laid down with regard to partial mania in relation to testimony, are really applicable to the evidence which may be given by persons laboring under melancholia. It is true there are clear distinctions to be drawn between these two diseases, but these distinctions are not of such a nature as to introduce new rules with reference to the reception of evidence. The melancholic will in many cases make a competent witness. The mind is sluggish, much of its power is in abeyance, but still it is a mind, although a mind under the blanket of the dark; and although most of the mental processes are performed at snail's-pace, they can be performed. In relation to this disease, which in higher stages of civilization often takes the form of religious fear and doubt, there is not unfrequently a state of hyperæsthesia—morbid consciousness—which, although at first sight it might seem to be a qualification for truthful testimony, is really calculated to injure the person's capacity as a witness. What one requires in a witness is robust, practical truthfulness. The squeamish doubts of the casuist, or the morbid conscientiousness of a melancholic, are both inimical to real and useful truth-speaking in a court of law.

§ 461. **Deposition of Insane Person may be Read.**—It may be well to note in this place that if a sane person has given a deposition and subsequently goes insane, upon proof of his insanity, his disposition will be admissible in evidence at common law,[1] in like manner as if he were dead; and it is said that the same rule prevails although the insanity be only of a temporary character.[2] So it may be well to remember

[1] Proctor *v.* Lainson, 7 Car. & P. 631, per Ld. Abinger.

[2] Reg. *v.* Eriswell, 3 T. R. 720, 721, per Ashurst, J., and Lord Kenyon. See Taylor on Evidence, 5th ed., p. 463.

that the insanity of a subscribing witness lets in the proof of his signature.[1]

§ 462. **As to Affidavit of Lunatic.**—The jurat of an affidavit sworn by a person suffering from monomania, and confined in a lunatic asylum, should state the fact that it was sworn in an asylum, otherwise it is irregular and will be taken off the file.[2]

§ 463. **Effect of Inquisition of Lunacy on Evidence.**—An inquisition of lunacy found against a person is *prima facie* evidence of his incompetency as a witness, and unless it be overcome by evidence of his sanity, he should not be permitted to testify, even as against one not a party to the proceedings in lunacy.[3]

§ 464. **Habeas Corpus to bring up a Lunatic.**—A *habeas corpus* has been awarded to bring up the body of a person confined as a lunatic, for the purpose of giving evidence in a cause, but it was only granted on an affidavit which stated that he was not dangerous, and was in a fit state of mind to be examined.[4] That this is the practice shows how important it is that medical men and others should understand the rules and principles applicable to the question of the admissibility of the evidence of the insane.

[1] Currie *v.* Child, 3 Camp. 283, per Ld. Ellenborough; Bernett *v.* Taylor, 9 Ves. 381, per Buller, J.

[2] Spittle *v.* Walton, 40 L. J., Ch. 368. See also Re Christie, 5 Paige, 242.

[3] Hoyt *v.* Adee, 3 Lans. (N. Y.) 173.

[4] Fennell *v.* Tait, 1 C. Man. & R. 534.

CHAPTER XXIV.

ON THE EXAMINATION OF PERSONS SUPPOSED TO BE OF UNSOUND MIND.

§ 465. **The Difficulty of Diagnosis.**—[320]There is scarcely any subject in connection with the medical jurisprudence of insanity which it is so important that medical men should rightly understand as diagnosis. It is by no means easy to discover when a person is insane. The difficulty is sometimes quite as great in establishing the fact of sanity. Of course the determination of these questions necessitates a thorough knowledge of insanity as distinguished from sanity. But in many cases all a physician's wisdom will not serve to assist him to a satisfactory diagnosis unless he has a considerable amount of that peculiar cleverness in the minutiæ of human intercourse which has been called *tact*. We cannot give rules for the exercise of this ability. All that we can do, in this place, is to suggest a few rules which may guide the questions of the practitioner who is asked to see an individual with a view to signing a certificate, or who has to examine an alleged lunatic with a view to ascertaining the fact of his sanity or insanity, whether it be with regard to civil or criminal proceedings. When we have done this, much will remain to the individual genius of each member of the medical profession who may be brought, for any of the above-mentioned purposes, in contact with persons of unsound mind. It is impossible to state rules for the manners of the examiner, and yet any one who has been associated with the insane must be aware how important demeanor is in all cases.

§ 466. **The Method of Examination.**—Medical men may be called upon to examine persons who are supposed to be

insane—may be asked to determine whether or not mental unsoundness really exists; to predict, as far as practicable, what will be the duration and termination of the mental unsoundness, if present, or to say as nearly as possible, the time at which the mental unsoundness originated. And it is with these objects of examination that we have principally to do in this place. The physician, however, will endeavor to ascertain the morbid conditions upon which the mental unsoundness depends, to discover the conditions which predisposed to insanity or directly induced it, and to decide what remedial measures will most certainly and speedily secure its diminution or removal. In these researches, he will have recourse: (1) to conversation with the relatives, friends, acquaintances, or attendants of the alleged lunatic, and in that way will make himself cognizant of his previous history, of the mode of origin of the supposed mental disorder, and of the symptoms which had manifested themselves previous to the date of the examination; (2) to an inspection of the alleged lunatic, so as to observe and interpret any outward manifestations of mental unsoundness in physical degeneration, muscular action, deportment, or dress; (3) to conversation with the alleged lunatic, so as to elicit the state of his or her intellect, emotions, desires, and will; (4) to physical exploration of the organs and viscera of the alleged lunatic, so as to obtain information as to his or her general health and the state of the nervous system.

§ 467. **Conversation with Relatives and Friends of the Patient: Difficulties of the Investigation.**—Great care must be taken in weighing the evidence of insanity which is conveyed to the medical man by those who are about the patient. In many cases, the practitioner must exercise a sound common sense in judging of the reliability of those who communicate facts which they regard as indicative of insanity to him. He must take into consideration not only the motives which they may have for speaking the truth or telling a lie, but even if he is assured of the perfect good faith of those with whom he communicates, he must be convinced of their ability to communicate the facts which they pretend to tell. In many instances, if you ask one of those persons

who are acquainted with the symptoms of insanity, by reason of constant attendance on the insane, they are utterly unable to give their reasons for regarding any of the patients under their care as insane. If you ask an attendant in a lunatic asylum how he knows some particular patient is insane, he will answer, "He would not be here if he was not mad." It requires much care and some real ability to arrive at a conclusion as to the relative value of testimony, and medical men ought to be careful in weighing the facts which are communicated by the relatives and friends of those whom they examine. Many things will be mentioned to the medical man as proofs of the existence of delusions which are not evidence at all; and, on the other hand, actual delusions, because they seem connected with ordinary facts, will often be overlooked by relatives who may have every desire to be accurate. Thus, a sudden change in the habits of an individual will, to a medical man, often indicate the presence of mental disease, although the conduct after the change may not, to an ordinary observer, appear in any way extraordinary. Thus, we have met with a case in which, in an old gentleman, the beginning of undoubted mental disease was indicated by a careful brushing of the back hair and a flower in the button-hole of his coat. Imagine a medical man in a witness box stating such circumstances as facts indicating insanity! Imagine his examination! "Do you say that you regarded this gentleman as mad because he brushed his hair and wore a violet in his button-hole?" "Yes." Imagine the counsel's look at the jury, the Judge's puzzled expression, the jury's broad grin! Everybody in court seems to have put their shoulders into their ears, and the general impression is that the patient is sane and the doctor mad. Yet in the case alluded to, these circumstances did indicate a complete change in the mental condition of a man upwards of sixty years of age; and a complete change at such an age is not a [322]change for the better, and is indicative of the gravest deterioration of the organization. But it is evident from this that, if you failed to make a Judge, a counsel, and a jury understand that such circumstances were significant, such little things would probably escape the observation of the friends of the supposed lunatic, and in this way the in-

formation the medical man receives is generally defective and often untrustworthy. Even in judging of delusions, friends show a sad want of competence. A man may say he believes his wife to be unfaithful, and that may be a delusion or it may be a well-founded belief. There is often much difficulty in ascertaining which of these a statement arises from. If you ask a man why he believes his wife to be unfaithful, he may have some delicacy in stating the reasons he has for thinking so; but you are not therefore to conclude that [323]it is a delusion. In such a case, all the circumstances of the case must be considered: his mode of admitting his belief, his whole language and conversation, and any derangement of physical health which may indicate the presence of mental aberration. Even where the belief is in some fact that at once shows that the mental impression must be a delusion, care must be taken. Galileo was put in prison because he said the earth moved round the sun, and Soloman de Caux was confined in a lunatic asylum because he said that he could make ships and carriages go by steam. We boast of enlightenment in these days, but some of our prejudices are quite as deeply rooted as that in the Ptolemaic system of astronomy, and we have ourselves met a medical man who would scarcely hesitate to sign a certificate for any "good old tory." Again, even where those who are about the patient are capable of giving useful and accurate information, there are often circumstances which would induce them to be untruthful. Thus, a family is tormented with the erratic vice of one of its members; its respectability is in jeopardy; it looks forward to a time when he may be placed in a felon's dock; their position in society is at stake; it seems to them that the kindest thing that they could do for "poor George" is to put him in a lunatic asylum, and so keep him out of prison. And all these reasons tend to render the information they give to members of the medical profession less trustworthy than it might otherwise be. Or it may be a husband is anxious to get rid of a wife with whom he finds he is unable to live happily. It may be that there are reasons for this want of comfort: his wife may be a drunkard, and he may endeavor to induce medical men to regard this habitual drunkenness as a symptom of mental disease. And we would

say, in passing, that medical men should always be careful to ascertain that the patient whom they propose to examine is sober at the time of the examination. Cases have arisen in which this precaution has not been taken, and in which consequences of the most unpleasant description have ensued. Many other circumstances may point to a similar tendency on the part of informants. Thus, an individual may be accused of a crime, and all his friends may combine to give such an account of his past life as, taken in connection with the act itself, may lead to a belief in the mental unsoundness of a person who is actually sane. Again, on the other side, it is often the [324] interest of those to whom the medical man must turn for information to prove that the person under examination is perfectly sane. The individual may have been boarded with a private family, and certain acts may have suggested the necessity of his removal to an asylum. In such a case the persons on whom the examining medical man must rely for a statement of the case, in so far as its recent history is concerned, are those whose object it is to prove that all the insane acts, which suggested the necessity of his removal to an asylum, were harmless eccentricities. All these circumstances are mentioned with laughter as if nobody thought anything of them; and we know of a case in which the desire to keep a person who paid a large board made the people regard the biting off of the head of a kitten as a pleasantry and an excellent joke. Other cases have been indicated in earlier parts of this work which will suggest to the reader circumstances in which it would be for the interest of those who are about the patient that the truth should not be spoken. In all such cases it behooves the medical man to be exceedingly vigilant; for we need hardly say his duty is to speak the truth, and while there may be excuses for the untruthfulness of the near relatives of an individual if, in the supposed interest of a friend, they depart from truth, there can be no excuse for the medical man who so far forgets himself as to sacrifice one jot or tittle of the code of truth for the sake of a paltry fee, or for any other reason that can be urged. Feelings may excuse a father who would save a son from a gallows lying as to his past history, which he cannot look upon for his tears, but no feelings ought to influence the judgment

of the medical man, who is none the less on his oath before God because he has not kissed the book. But to get at the truth even from those who are able and willing to speak it, one must have the capacity to elicit it; and one or two hints as to the sort of investigations which it is well to make in conversations with the relatives and friends will not be thrown away. First, with reference to cause, when the medical man has ascertained the name, age, occupation, and social condition of the patient, it would be well for him to inquire as to the precise stage of his or her development, for special proclivities towards mental disease are connected with pubescence, adolescence, senility, and with the epoch of the change of life. He ought to inquire as to hereditary predisposition to insanity. If that is found to exist, it would be well to ascertain the exact character of the psychosis, and inquiries ought to be made as to the existence in the ascending line of paralysis, apoplexy, hysteria, chorea, neuralgia, habits of intemperance or licentiousness, and even as to the known existence of tubercular diseases and phthisis in the family. Questions as to injuries to the head or the spinal cord will often elicit information valuable to him who would form a right estimate of the disease. Inquiries should be made as to the patient's previous health; as to his having suffered from fevers with delirium, delirium tremens, or syphilis; as to previous conditions, such as unterogestation, lactation, starvation; as to previous habits, such as intemperance or licentiousness, use of narcotics (opium, chloral, etc.) and as to the physical conditions of health in his past history, such as exercise, absence of intellectual strain, of anxiety, of grief or disappointment; as to the state of the affections, and religious convictions. The medical man ought to ascertain whether the incursion of the disease has been sudden and unexpected, or slow with visible and well-marked stages, or slow with obscure variations in degree. The character of the early symptoms, although it is difficult to get at them, should be ascertained, and the suggestions most likely to elicit information would be: Did a change come over his character, and what was that change? Was he depressed? Was he excited, restless, or easily agitated? Was he sometimes depressed, and sometimes excited? Had he extravagant notions of his

wealth, or power, or rank? Was he suspicious? Had he any odd religious notions? Was he violent, dishonest, or immoral? Was he undecided, and did he seem to have lost energy? Was there any failure of memory or of the power of apprehension? Inquiry with regard to any bodily symptoms which accompanied the earliest morbid mental phenomena would be of use; thus, inquiries as to whether he suffered from headache, and if so, in what region; if he was sleepless, or suffered from muscular tremor; if he lost the power of speech, or if it was impaired; if his sensibility was increased or impaired; if he became fatter or less robust; if his appetite was good or bad; and if, in the case of a woman, the menstrual functions were regular or irregular.

§ 468. **General Rule as to Information received from Friends and Relatives.**—In receiving information from other persons, it is always well to ascertain that they attach the same connotation to a term as that which is attached by the recipient. There are many loose words and phrases which have no precise meaning used in this way, such as "strange," "excited," "not himself," "wandering," "incoherent." And when such words or phrases are made use of, the medical man would do well to ascertain the reasons of their use, or the acts done by the individual which will warrant their use, or render them applicable.

§ 469. **Means of Gaining Access to Patient.**—[325] It is sometimes by no means easy to gain access to the individual who is to be examined. Persons of unsound mind are often very suspicious. Monomaniacs are very frequently full of suspicion; and even those persons who do not labor under monomania, but who have been in an asylum previously, are upon their guard against medical men; so that it is sometimes almost impossible to procure the interview which is necessary if a medical man would form any opinion as to the mental condition of his patient. In many cases, insane persons, of whose morbid condition there could be no doubt, have refused admission to medical men, and have threatened violence if the intention to thrust a medical man into their company was persevered in. In many cases, they would un-

doubtedly have carried out their threat, and some of them have intelligence enough to reason that if they did kill a man there would at least be a doubt as to their responsibility, like the lunatic in an asylum near York, who, when Martin set fire to the Minster, was discussing the matter with some of his fellow-inmates, and who said, "He (Martin) will not be hanged, of course: he will escape. They can't hang him because he's mad: he is one of ourselves." But there are many other ways in which the desire for an interview may be frustrated. Persons of unsound mind are aware that no force or compulsion can be used, and if a medical man is shown suddenly into their presence, they may resort to the expedient of leaving the room; and some have, under similar circumstances, sat quiet and held their tongues. There are many ways in which this purpose may be obstructed and the intention frustrated. Under these circumstances, many medical men resort to stratagem. If they are informed that the lunatic believes himself to be a king, they go into his presence as a meek and dutiful subject. If the man is a melancholic, as a clergyman; if an optimist, as a beggar. They repudiate the supposition that they are medical men, and appear before the patient in some less distasteful capacity. Some writers have disapproved of this system, and have argued that it is better to go into the presence of a lunatic *in propriâ personâ* without any simulation. They argue that when such is the case, the medical man is in a position to question the supposed lunatic more minutely than he could otherwise do, as to his health, his feelings, his sensations, and the like, and that in this way he can invariably reach the insanity of the individual in a shorter time than he could [326] otherwise. It is certainly true that "self" is the object of a lunatic's thought; indeed, lunacy might almost be defined as morbid subjectivity. It is always thus—a dagger of the mind becomes as real to the insane person as an objective dagger. His own intense feeling of self darkens the world, as in a case of melancholia, or lightens it, as in one stage of general paralysis. But against this view it may be urged that if the medical man can get a correct description of the mental symptoms of the person he is about to examine, and can skilfully mix himself up with the morbid impressions of the

lunatic, the insanity will unfold itself immediately, and no difficulty will be experienced. This, however, is by no means easy of achievement, and we should recommend medical men to resort to this expedient as rarely as possible. But obstructions are thrown in the way of medical men in the exercise of this duty not only by the patient himself, but by friends, who may mean well, but who very often do ill. To some near relatives of a patient, it seems a horrible thing to shut him up in a lunatic asylum. There is much of the old prejudice existing in the minds of the public as to the madhouse, so much so, that a friend of our own, who has charge of one of the largest asylums in ———, was asked by a man, who came to remove the body of his wife, "how he had put an end to her." The man added that "he did not object—he knew it was often necessary—but he thought it would be a satisfaction if he knew." These prejudices induce many of the friends of patients to throw obstructions in the way of the examining medical man; and many resist the inspection of the relative upon all manner of grounds, and we know of a case in which it was resisted even with force. However, let us suppose those obstacles overcome: the medical man is in the presence of his patient, and the question is, how should he proceed?

§ 470. **Inspection of the Patient.**—A medical man, when he has gained access to the patient, should direct his attention to the general state of nutrition in relation to age. The temperament or cachexia, as indicated by the configuration of the body, complexion, color of the hair, movements, etc., ought to be observed. Much may turn upon the observation of whether the patient is of the nervous and irritable temperament, of the sanguine or excitable temperament, of the melancholic or despondent temperament, or of the lymphatic or sluggish temperament, and if the patient presents outward signs of the strumous, arthritic, rheumatic, or cancerous cachexiæ, of anæmia, or chlorois, or other constitutional vice. The general condition, as regards health and development, should also be observed. The medical man should note whether the head is of large or small size, whether it is symmetrical and well-balanced, or presents any peculiarity of

shape; whether the body is well grown, or stunted, decrepid, or deformed in any part. He ought to pay considerable attention to the expression of the individual before him. That this is of the utmost importance cannot be doubted after a perusal of Mr. Darwin's valuable work upon the expression of the emotions in man and animals, and the many valuable notes which exist in that work as to the physiognomy of the insane. It has, however, been objected that the peculiar physiognomy of those laboring under insanity can only be appreciated by those who have known the expression of the patient in a state of health. But this is not so, although the distinction may be more marked to those who have the advantage of both these classes of observation; who have the effect of change to assist them in discriminating between the influence of health and disease upon that mosaic-work—an expression. Still there is a type of expression easily recognizable by those who have made the face-symptoms of health and disease their especial study. All faces seem to have meanings besides or underneath, as it were, their changing expression; and in disease, it is this meaning that is altered rather than the expressions which pass over it. The tides are changed while the waves remain the same. There are certain lines of observation to which it may be useful, merely as a mnemonic, to call the medical man's attention. He may note whether the face has the ordinary signs of the intelligence of feeling which is characteristic of persons of the rank and class to which the patient belongs. Whether it indicates innate weakness and imbecility, stupidity or fatuity, abstraction or self-absorption, restlessness and agitation, irascibility, settled grief and suffering, urgent alarm and terror, horror, wonder or astonishment, hilarity, benevolence, religious exaltation, furtiveness or distrust, pride or haughtiness, vanity and self-esteem, erotic excitement or criminal degradation. Play of feature is not unfrequently a sign of health or returning health. When there is one paramount expression which sits enthroned on the face, there is some probability that it owes its stability to disease. Besides the [327] face, the manner and demeanor of the individual are to be carefully noted. Of course in these recommendations we do not wish to be supposed to refer to those acute forms of

mental disorder when no such examination is necessary, nor to those well-marked forms of the disease, such as mania, idiocy, or dementia proper. Such rules as I would suggest for the guidance of medical men must be understood to have reference to those doubtful cases in which it is difficult to discover the existence of insanity, for in many cases a careful concealment of all abnormal mental symptoms goes so far as almost to suggest the possibility that it is a part of the disease. Here again we may give certain lines of observation, merely for the purpose of reminding the medical practitioner. It may be noted whether the individual is timid and reserved, or bold and defiant; whether he is peaceful or aggressive; whether he is tranquil or disturbed; whether he is dignified or humble; whether he is bowed down or elated. And muscular tremors, spasms, twitchings, or paralysis, should they exist, ought to be noted.

§ 471. **By Conversation with the Patient.**—To a very considerable extent, the medical man must, in his conversation with persons supposed to be insane, be guided by the circumstances which have been brought to his knowledge by conversation with the friends and relatives of the person to be examined, or by the inspection of which we have just spoken. It is well for a medical man, in most instances, after an exchange of ordinary civilities, to refer at once to the state of the patient's health. It is curious to note how many forms of mental disease centre in hypochondriaces, of one form or another. Certain characteristics are to be noted in reference to such conversation, whether it is upon ordinary topics, apart from the individual's mental disorder or not. First, it is well to observe whether it is vivid or dull, concentrated or rambling, sustained or intermittent. The power of memory ought to be tested by questions both as to near and remote events, and questions as to general and important occurrences, as well as to circumstances which have occurred in the individual's own personal history, will often be found advantageous. It is well to discover whether he is able to tell how many people are in the room; whether he knows his own age. whether he is conscious of the lapse of time, and can remem-

ber the order of recent events. Questions should be asked to ascertain whether he takes any interest in political events, or knows the names of the Queen, or of any of those persons who are for the time most frequent subjects of conversation. Inquiry ought to be made as to the religious belief of the patient; as to his knowledge of the ordinary and best known tenets of religion. Besides these subjects, questions of business may be introduced, and his knowledge of the value of money, of his own affairs, and of mercantile arrangements generally, should be asked. Of course, the medical man must suit his questions to the position and education of his patient, and must judge of the answers he receives in relation to these circumstances. A coarseness that would be natural in one, would be an indication of morbid mental conditions in another, and not only must the general rank and [328] position of the examinee be borne in mind, but it is well to become familiar, if it is possible, with any mental peculiarity which may have existed before the alleged inception of the disease, and to see whether the idiosyncrasy has passed into actual disease. During the whole of the conversation we would recommend observations as to the power possessed by the individual over the concentration of consciousness, and a distinction must be drawn between the answers to those questions which necessitate a simply affirmative or negative answer and those which are likely to require considerable judgment and reflection before any satisfactory answer can be given. It is also well to note whether the patient has any control over his feelings, and a short and flat contradiction will often bring out the fact whether he does or does not possess this power. It can be easily understood that all this information cannot be elicited without much tact and ingenuity; but it must be borne in mind that much conversation upon indifferent topics is generally of very little use. Many persons who labor under any form of partial insanity can conduct a conversation upon indifferent topics for hours, and often simple allusions to the topics which are connected with the diseased belief of the individual will not immediately bring out the fact of insanity. Although we have suggested topics of conversation, the medical man must be guided very much by circumstances. Of course if a delusion exists, and if it can

be discovered by the examiner, all difficulty is at an end. But, as we have pointed out, it is of the utmost importance to determine the fact of illusion, not upon the testimony of others, but upon the facts observed by the practitioner himself. It has been recommended that when it is impossible to determine the fact of the existence of a delusion, without having recourse to the evidence of others—and this is very often the case—the source of the information should be stated, together with the information itself. Thus it might be put: "The patient tells me that he is ruined, which I am assured by his wife (or son, or lawyer, as the case may be) is an entire delusion."[1] There is certainly a specious look about such a procedure, but it seems to be only one way of avoiding the recommendations or express enactments of the act. And it is much better if one is unable to discover sufficient indications of insanity at one interview to refuse upon that occasion to sign the certificate, and [329] to return again at another time. In such a case the necessity for incarceration cannot be very urgent, and it is certainly better to suffer, or make others suffer, an inconvenience than to do an act which may lead to gross injustice. Much difficulty will doubtless be felt in many cases where the patient in not intellectually but morally insane. In such cases, as we have seen, no delusion may be present, and the morbid propensity may manifest itself only in a series of acts, every one of which is criminal in its nature. Here the medical practitioner must be very careful, but it is right that he should sign a certificate for any individual whom he regards as markedly insane and concerning whom he would, if a crime were laid to his charge in a court of justice, make a similar assertion upon oath. But many medical men are more careful of signing a certificate which will deprive an individual of liberty, and may, in time to come, subject them to prosecution, than they are of swearing in a court of law to the sanity or insanity of an individual in whom the disease may scarcely be so marked. A careful study of the descriptions already given of the various forms of moral mania, and an inquiry into the past history of the case so as to bring into view the possible cause

[1] Blandford on Insanity.

of the disease, will, it seems to us, in all cases enable a medical man to sign a certificate for persons laboring under this form of mental unsoundness. [330] The confession of the individual who is examined will also assist him, for they not unfrequently acknowledge their faults and deplore that sad abnormal weakness of the flesh which, as it were, compelled them to sin. The medical man must be prepared to find many cases of actual moral mania or moral imbecility in which the disease is not discernable by him in a single interview. Many moral maniacs and imbeciles, as we have seen,[1] are perfectly capable of reasoning accurately concerning many of these delusions, and some lunatics are adepts in concealing their delusions. Only care and an expenditure of time and patience can overcome these difficulties. With regard to the special tests which may be applied in the different kinds of moral mania described in an earlier part of this work nothing need be said in this place. The medical man must in each case adapt his examination to the supposed disease; and he must be careful not to cling too persistently to any hypothesis that he may have formed. An hypothesis is to a theory very much what a provisional committee is to the actual company of directors. It is well not to allow the one to supersede the other. It is a sign of a want of thorough education in a man if he clings to an hypothesis after it has been proved useless by the progress of discovery. It is an error many fall into. With regard to cases in which mental deterioration and decay is going on, questions which go to test the memory of recent and remote events are most important. It is well in such a case to have provided oneself previously with some accurate information with regard to some trivial event in the past life of the patient and to question him concerning it, and to compare his recollection of such circumstances with his recollection of other and more important events. Repetitions of words or sentences, questions or stories, must be noted. Forgetfulness or confusion of names, a knowledge as to his affairs, as to his children, as to places he has seen, as to people who are dead, and the strength of his volition, ought to be made subjects of inquiry.

[1] See ante § 157 *et seq.*

Of course it is only in cases where the [331]dementia is still incipient or has only made a little progress that any difficulty can arise, just as it is only in the least-marked degrees of imbecility and in the partial forms of mania, that there can be any necessity for so minute an examination.

§ 472. **Examination of Letters to discover the Insanity of an Individual.**—In many cases, it will be expedient to examine the letters and other writings of the patient. Many men "write themselves down" asses. They are off their guard when they are writing to some friend, and they are not under the restraint of a personal presence, or tempted to the dogmatic reticence by the questions that are put. Timid people will be bold in a letter, and insane persons will often betray their delusions in ink. A comparison between letters of a supposed lunatic during the time of the alleged insanity, and before its inception, will often prove useful.[1]

§ 473. **Evidence necessary to Support Affidavit and that which must be given in Certificate.**—One remark may be made upon the distinction which is drawn between the evidence necessary to support an affidavit and that which is required to be given in a certificate; and that is, that in the former a general declaration with regard to the insanity of the individual, supported by facts observed or information obtained at any number of previous interviews, or gathered from an intercourse extending over years, is all that is necessary, while all the facts that are stated in a certificate must have been observed, and all information quoted must have been obtained upon the same day upon which the certificate is signed.

§ 474. **As to the Filling up of Certificates.**—It is not necessary in this place to go very fully into the question of the way in which medical men ought to comply with those re-

[1] In the case of Young *v.* Dendy, (1 L. R., Prob. 344,) which came before the Court of Probate some years ago, the insanity of the testatrix does not seem to have been suspected by some, and was certainly not recognized by many of those who were about her until the discovery of some writings after her death, which went far to show that she must have been insane.

quirements which are made by act of Parliament with reference to the admission of insane persons into hospitals for the insane,[1] but one or two remarks as to the slovenly way in which many of them perform this very simple duty may be made in this place. It is a somewhat curious fact that a training which ought to make men accurate—such as a systematic study of medicine—should have the directly opposite effect. Perhaps it is, as Bacon says, writing that makes an accurate man, but one thing can be said with confidence, and that is, that medical men are most inaccurate. We were once present in a class of Medical Psychology and Mental Disease while its pupils, who were young men who had just taken their degrees, were being exercised in the filling up of certificates. The certificates when filled up were submitted to us, and we regret to say that, out of the eighteen or twenty which we examined, not one was correct. The writers had, it appeared to us, in every case, neglected to read the rubric directions, as to how it was to be filled up, with anything like rational care. The following statements, which we have procured from an asylum case-book, and which were in the certificates given under the head of "Facts [332] indicating Insanity observed by myself," will further illustrate, and will go far to prove, this assertion. One medical man gives as a fact indicating insanity observed by himself: "She seems to be a person of very deficient intellect, and lives alone with an old woman who is intensely deaf;" another, "laughs in an incoherent manner;" another, "answers to any questions that may be put to her, and desires to be on the open sea;" another, "that her lips are in motion as though in mental conversation;" another, "commenced laughing for a considerable time;" and still another put "an excitable aspect and oblivious manner." All these indicate a considerable amount of incoherence, at least in the medical man, and the absurd solecisms and bad grammar are too obvious to require mention. We will quote one other example that has been supplied us. "She is," says the medical man, speaking of the patient, "at this moment exclaiming vehemently about death, and the skies, and all sorts of incoherent subjects; that she is violent

[1] See Sabben & Browne's Handbook of Law and Lunacy. London: 1872.

and intractable. I have a medical certificate before me of the patient's insanity: it appears to be distinctly puerperal mania." From this we gather that, in the opinion of this medical man, "death and the skies" are "incoherent subjects." What is meant by "incoherent subjects" we do not profess to understand, any more than we know what a "mental conversation" or an "incoherent laugh" is. But we learn more, that a "medical certificate" may be "distinctly puerperal mania;" that all these things are facts, that they indicate insanity, and that they have been observed by this highly intelligent medical practitioner. If medical men would read the marginal notes which are appended to the printed form which they are required to fill in, and if they would pay some attention to what they read, these stupid mistakes could not arise. It is best to form every statement of fact into a sentence, and to be careful that, when speaking of what you have yourself observed, you do not introduce matter which has been communicated by others. Vague terms are to be carefully avoided; and opinions are never to be stated as facts. The necessity of the statement of such rules is shown by the above instances of blunders.

§ 475. **General Rule for the Guidance of Medical Men who Conduct Examinations.**—Whether the examination be instituted with a view to arriving at an opinion on which to found a report, on which to found evidence which may be demanded in a court of law, or on which to fill up and sign a certificate for the incarceration of a lunatic in an asylum or hospital, it is well for the medical man who conducts the inquiry to endeavor to be as fair and just as possible. The medical man is not, or ought not to be, an advocate of one view or another. His sole anxiety ought to be to do justice. [321]He is, as it were, in the position of a Judge. He has to weigh and consider the facts which he himself observes, and the evidence which is communicated to him by others. The best Judge is an advocate after all, but it should be the strenuous endeavor of each one who is in such a position to be as impartial as it is possible for a man with a human bias to be. One important observation, which is applicable to all examinations conducted by medical men, is, that they should never

endeavor to trap the lunatic. Such arts are allowable in a court of justice where there are counsel on either side and a Judge who is capable of watching over the interests of justice, and at the same time is not incapacitated from regarding the interests of the accused. But in such examinations as those which are at present under consideration, any such arts are entirely out of place. Still medical men are not unfrequently induced to indulge in such Old Bailey tricks from the pleasure they feel in exercising their own ingenuity. Such a practice cannot be too severely censured.

§ 476. **The Prognosis of Insanity.**—The examination of the physician must almost always, after the fact of insanity has been established, be of such a nature as to enable him to predicate with some certainty as to the probable course of the disease and the prospects of recovery. It is very evident that this question is one of the utmost importance in relation to the medical jurispredence of insanity. If the attack of insanity under which the individual is laboring is of a transient nature, if the violence which symptoms the disease will soon pass away, then it may be well to forego the extreme measure of removing the patient to an asylum. Again, where the chances are great of a speedy recovery, it would be ridiculous to take out a commission of lunacy, which would only occasion expense and inconvenience to the individual after his recovery, in having it set aside. In every case, a prognosis is of much importance.

§ 477. **Of the Statistics of Recoveries.**—[315] Many people have a passion for statistics, just as a miser has a passion for money. The accumulation of figures in the one case is often as useful as the accumulation of figures in the other. So a great many medical gentlemen who have insane patients under their care have made large collections of these facts, or what they call facts, and have imagined that they have been doing good service to the science of medical psychology. Well has Emerson said, "It is not new facts that avail, but the heat to dissolve everybody's facts." There have been very few furnace heads applied to that heap of rubbish which is called facts. We must be content to see what these

rags are. As to the number of recoveries from insanity, the statistics which have been offered to the public are, so far as we know, exclusively derived from returns furnished by large hospitals for the insane. Even if these were accurate in themselves, this circumstance would render any inference as to the curability of insanity generally worthless. We have heard a good deal about "hospitalism" recently. Medical men have asserted that an hospital is to the grave what the jackal is to the lion. Sir James Simpson was at the head of those who thought that hospitals were bad things, and that people were taken to infirmaries to die. Now, we have seen a tendency to the spread of this idea. If a great man has an idea, there are a dozen little men who run away with it, make some slight modification in it, and then call it their own. The retail dealer often has more credit for the excellence of the wares than the maker. So this idea has been adapted, and a new department of sanitary science has arisen which we may call "asylumism." According to this made down theory, asylums are bad places, and the places least likely to conduce [316] to the recovery of the insane. If this is true, it will militate against the value of many of the statistics which have been collected. Esquirol asserts that the number of recoveries from insanity is one in three. Prichard, on the other hand, imagines that the computation of recoveries is much too low; and Dr. Thurnum[1] says: "As regards the recoveries established during any considerable period—say twenty years—a proportion of much less than 40 per cent. of the admissions is, under ordinary circumstances, to be regarded as a low proportion, and one much exceeding 45 per cent. as a high proportion." The many sources of fallacy scarcely require to be pointed out. Those who have a high opinion of figures may retain their respect for them. It is, however, certain that in cases where the disease is not of long standing, treatment can be much more efficaciously applied than in those where it has existed for some time. The analogy of all diseases proves this. There are pathological habits just as there are physiological habits. Dr. Burrowes states the proportion of recent cases cured under his care to be ninety-

[1] On the Statistics of Insanity.

one in one hundred. This is proved indirectly by the fact that the most favorable age for the cure of the disease is not only the youth of the disease, but the youth of the individual affected. The probability of recovery in middle life is very small in comparison with that which exists in relation to the insanity of early life. And it has been said that recovery almost never takes place after the age of fifty. Dr. Boyd has shown by his tables that 86 per cent. of males, and 92 per cent. of females, attacked with mania under twenty years of age, recovered at the Somerset Asylum during his management.

§ 478. **Prognosis Generally.**—With regard to prognosis generally, it may be said that, while statistics prove that insanity does diminish the mean duration of life, yet it is not in most cases a disease directly fatal or even dangerous to life. General paralysis does, however, progress through its weird seasons to a fatal issue. Death almost invariably occurs within two years from the commencement of this disease. Some of the acute forms of insanity prove fatal by producing exhaustion, or death may, unless care is taken, follow persistent refusal of food. Another most important point to be marked in connection with prognosis is that, in many phases of this disease, there exists a strong desire to commit suicide.

§ 479. **As to Recovery.**—[317] With regard to recovery, it may be said with truth that it generally takes place slowly and gradually; but that occasionally some sudden moral or physical impression has the effect of removing the morbid beliefs, and the man sits clothed and in his right mind, who only an hour or two since was mad. There are many cases of instant cure related in books on insanity.[1] After what has been said concerning the causes of insanity, it need scarcely be remarked that, in addition to the circumstances above alluded to, which predispose to sanity besides the youth of the individual and the recence of the disease, an early recovery is to be hoped for in those cases where the constitution is

[1] See Prichard, Rush, Esquirol, and Pinel.

good, where there has been no excess of any kind, where the education of the individual has been good, which not only means good *per se*, but which includes good in relation to the faculties of the individual. The absence of hereditary tendency will of course give the individual more chance of early recovery from insanity, if the insanity is of a kind admitting of cure. When this is the case, when the disease is capable of removal by treatment, it is very difficult to say. We know, however, that idiocy, imbecility, and senile dementia, admit neither of cure nor of amelioration. And until very recent times, general paralysis was regarded as not only incurable, but necessarily fatal in a certain time. Even mania, which is the most curable form of insanity, when it has existed for more than two years, is ineradicable. Such statements, however, are only relative. Our present knowledge of mental disease and of pathology is very defective; with a fuller knowledge, with a more accurate experience, it is impossible to say how much these opinions would require to be modified.

§ 480. **The Tendency to Recurrence.**—One circumstance must not be overlooked in connection with the question of the durability of insanity, and that is, that there is a tendency to recurrence even after complete restoration to health. Perhaps of a hundred persons who have an attack of mania, and who recover from it, fifty will after such recovery again become insane. After insanity has passed away, there seems to exist a hyper-sensitive condition of mind which is ill suited to carry on the rough intercourse of the world and its society. The man who has recovered is not so well as he was before he was taken ill. Disease always chooses the weak for its victims. Disease, like water, will take the easiest way; and as the individual who has recovered from insanity is weak [318] in that he labors under this hyper-sensitive condition of mind, he a second time falls under the wheels of some Jugarnatha catastrophe. Any great events in the world's history cause insanity, but the events are seeds which have fallen by the wayside: they require to fall on ground well suited, before they can spring up and blossom in insanity. And the good ground is weakness. Thus we have insanity connected with

childbirth, we have it connected with the weakness of childhood, with the weakness of age, with the change of life, and various bodily diseases; and finally we find it in connection with previous attacks of mental disease. The result, then, of these researches which have been made into the intricacies of this subject are these—that of twelve persons attacked with insanity, six recover and six die sooner or later. That of the six who recover three only will remain sane during the rest of their lives, and that the recovery of the other three will not be permanent.[1]

§ 481. **The Slowness of Cure.**—With regard to the cure, when it does take place, it is to be remembered that health, no more than Rome, is to be built in a day. Health returns very gradually. It is made up of many simples, and these are only to be reacquired slowly. In some cases, it is true that a man is sane to-day and insane to-morrow, and that the change to sanity from insanity may be as rapid; but this is certainly exceptional. It is easy to jump over a precipice, but if one wants to get to the top from the bottom, he must be content to clamber up the hill. It need scarcely be added that, as recovery of health is not a *coup*, but a gradual process, so must the recovery of responsibility or civil ability be also a matter of time. But as the law cannot recognize the minute distinctions which exist between disease to-day and to-morrow, it cannot recognize graduated responsibility; and it is only necessary to remember that this recovery of mental strength, and therefore of the mental qualities necessary for the appreciation of one's position and rights and duties, is gradual, that due allowance may be made for those persons who have recently suffered from an attack of mental disease, and that it is safer to regard such persons as still irresponsible for criminal acts and incapable of civil privileges, even although the recovery may seem very complete unless the contrary can be proved. Let the presumption be in favor of [319] their want of capacity and their irresponsibility, and no injustice is likely to arise. At the same time this pre-

[1] Older writers regarded the tendency to recurrence as one in six, and not as one in two.

sumption is to be looked upon as liable to be rebutted by proof of its opposite. There is really much virtue in these presumptions of law.

§ 482. **As to the Signs of Recovery.**—Some medical men have entered into descriptions of the symptoms which they regard as hopeful, and as indicating a tendency to recovery. When these are anything other than the actual return of the thoughts and affections of the insane person in a minor degree to their accustomed channels—in which case they seem to be regarding recovery as a hopeful sign of itself—they are disputed, and no real agreement exists as to what symptoms have, and what have not, a prognostic value. It is surely not prognosis to observe that when a man is getting better he is getting better.

CHAPTER XXV.

MEDICAL EXPERTS.

§ 483. **The Claims of Science.**—This does not seem to be an inopportune time to examine the question as to the use of experts in courts of law, and to endeavor to arrive at some definite principles in relation to the admissibility of their evidence. All sorts of absurd claims are, in these days, made in the name of science. Science is doing all the talking in our modern time, but it is a question whether it is making more real progress in the laboratory or on the platform, whether it is really wielding the sword with which it may conquer nature, or only flourishing the laurels it has already won. Never was there so much talking about science, but it must remain to be seen whether it is making as much progress through the froth and spume of this wide-spread praise as in the days when folk were willing to talk less and do more. However that may be, its claims are enormous. It claims to be the only method of education; and men like Herbert Spencer and Huxley assert that no good is to be got out of the osteology of thought which lies in mathematics, or out of the vague knight-errantry of thought which lies chronicled in history, but that in the facts of science alone there is nourishment for minds.

§ 484. **The Claims of Science in relation to Jurisprudence.**—But the claims of science in relation to law are no less striking, and it is curious to note that those scientists who are least well informed are the most exacting in their demands. This might seem strange at first, but a little consideration will show that this phenomena is explicable upon the ordinary principles that the greatest charlatans are those who demand the greatest amount of credulity. It has been

asserted with some truth that it is slaves make tyrants, and it is certain that it is the credulous who create impostors. However, our experience of lawyers is that they are somewhat disinclined to yield a ready adhesion to this new creed of science, unless it can show the credentials which entitle it to be received at the court of belief, and these are good and sufficient reasons. We shall see what this new creed is in relation to the subject with which we have in this place to do. Dr. Maudsley is one of the prophets of this new religion of science. He writes perspicuous books without putting much in them. What is new in his works is generally of questionable veracity, and what is true cannot at the same time lay claim to novelty. Still he writes well, and his books are read; and, possibly, he is believed in. He is one of those who is exorbitant in his demands for science, and who regards all lawyers as little better than numbskulls, because they are not prepared to accept medical evidence at more than its worth. In the work before us there is some foolish sneering at the late Lord Westbury because he condemned the evil habit which had grown up of assuming that "insanity was a physical disease." We have already had occasion to deal with the whole question of insanity in relation to law, and to point out that the undoubted fact which is asserted by medical psychologists that insanity is a physical disease, has nothing to do with the question of the irresponsibility of the insane in courts of law, or their incapacity to exercise the functions of citizens. No doubt every insane act is due to a certain disease in the brain, but those gentlemen who assert that, would not deny that any act which a so-called sane man can perform is due to his organism, due to a certain change, say, in the convolutions of the brain. But although physiologists alone are capable of appreciating these changes, it could not, we imagine, seriously be contended that all cases of contract should be submitted to them for their approval, and it does seem to us equally ridiculous to say that "the ground which medical men should firmly and consistently take in regard to insanity is that it is a physical disease, that *they* alone are competent to decide upon its presence or absence; and that it is quite as absurd for lawyers or the general public to give their opinion on the subject in a doubtful

case as it would be for them to do so in a case of fever." Yet these are Dr. Maudsley's words. No lawyer wants, so far as we know, to give his opinion either as to insanity or as to fever. He does not profess to be able to do so, but he does assert that he and the public are in a position to judge of conduct, that the proof of the existence of such insanity as incapacitates for civil acts, or renders an individual irresponsible in case of the commission of a criminal outrage lies in conduct, and that the fact that in the case of the insane the act is the result of certain changes which medical men have chosen to call disease, and that in the other it is due to certain changes which medical men have, with as much arbitrariness, chosen to call health, has nothing whatever to do with the subject. It is passing strange that persons of sound intelligence cannot see this, but that they will go on writing and speaking as most medical men write and speak in these days. We hear of the bench "frowning down psychological truth," and we have Dr. Maudsley claiming that insanity should be treated, "not as a subject of moral inquiry, but as a disease, to be investigated by the same methods as other diseases."[1] As to this last claim, let us say one word. Law has nothing to do with the investigation of diseases. If a man has lost a leg, and it is necessary to prove that he could not have walked to a certain place in consequence of that deformity, all the evidence that will be necessary will be such as proves that he was legless: evidence as to the disease under which he labored, and the necessity of the surgical operation, is beside the point at issue. So it is in the case of loss of mind: whether the cause of the loss be general paralysis or brain wasting, matters not to the lawyer, although it may to the psychological pathologist; but the question that law has to decide is this, Was the individual at a certain time, and in relation to a certain act, in such a relation as to knowledge and will, as that which is occupied by

[1] Responsibility in Mental Disease, by Henry Maudsley, M.D. London: 1874. The opinions of some of the best informed members of the medical profession in America may be ascertained from a perusal of the discussion which took place at the meeting of the association of medical superintendents held in Wisconsin in May, 1872, in the reprint from the American Journal of Insanity, pp. 66, 87. The opinion of Dr. Walker, of the Lunatic Hospital, Boston, Mass., p. 85, is particularly worthy of attention.

the majority of mankind when similarly circumstanced in connection with like acts? But enough has already been said on this point here and elsewhere. Lawyers are not likely to be turned from their staunch position by all the illogical nonsense which is poured out of such vials of wrath as are to be found in the breasts of those medical experts who have suffered a severe cross-examination, in which their threadbare theories fell to rags, and their high reputations looked but as ill-founded as their decrepit definitions and washed-out distinctions.

§ 485. **Object of this Chapter.**—But we meant in this chapter to deal with the question as to the admissibility of the evidence of medical experts, and to give those gentlemen who appear in the witness-box certain little pieces of advice, which will probably share the fate of all advice, and not be taken.

§ 486. **The Weight attached to the Evidence of Skilled Witnesses.**—The evidence of skilled witnesses has never met with much favor in courts of law, and it has been remarked that it is always the Judges who have been the least able lawyers who have been the most willing to admit evidence of opinion. In modern times, there has been a great reaction against authority. The right of private judgment has been claimed, and the worthlessness of the opinions of those who are not able to state facts upon which such opinions are founded, and the superfluousness of the opinion when once you have the facts has been thoroughly recognized. But Judges have long appreciated these facts in relation to evidence. The witnesses who came to speak to facts have been held in much esteem; those who came to speak to opinions, or to draw inferences from facts, have had but little credit in courts of law.[1] Thus, we find Lord Campbell remarking: "Skilled witnesses come with such a bias on their minds to support the cause in which they are embarked, that hardly any weight should be given to their evidence."[2] So in Am-

[1] See Taylor on Evidence, p. 73, § 50.

[2] Tracy Peer, 10 Clark & Fin. 191. See also Gurney v. Langlands, 5 Barn. & A. 330.

erica, Judge Davis expressed an opinion that "if there is any kind of testimony that is not only of no value, but even worse than that, it is that of medical experts. They may be able to state the diagnosis of a disease more learnedly; but upon the question whether it had, at a given time, reached such a stage that the subject of it was incapable of making a contract, or irresponsible for his acts, the opinions of his neighbors, if men of good common sense, would be worth more than that of all the experts in the country."[1] And another American Judge has spoken almost as strongly. "There seems to be but one opinion," he says, "as to the fact that this kind of testimony is extremely unsatisfactory. We are more and more confirmed in an opinion that the difficulty comes largely from the manner in which the witnesses are selected. If the State or the Courts do not esteem the matter of sufficient importance to justify the appointment of public officers, * * * it is certain the parties must employ their own agents to do it; and it is perhaps almost equally certain that if it be done in this mode, it will produce two trained bands of witnesses in battle array against each other, since neither party is bound to produce, or will be likely to produce, those of their witnesses who will not confirm their views."[2] And an able writer upon the law of evidence in our own country has observed that when witnesses come merely to give their opinion, "it is often quite surprising to see with what facility and to what extent these views can be made to correspond with the wishes or the interests of the parties who call them. They do not indeed wilfully misrepresent what they think, but their judgments become warped by regarding the subject in one point of view, that even when conscien-

[1] Neal's case, cited 1 Redfield on Wills, ch. iii., 101, § 13. Mr. Redfield in another place remarks as to experts: "Both in this country and in England they differ quite as widely in their inferences and opinions as do other witnesses. That has become so uniform a result with medical experts of late that they are beginning to be regarded much in the light of hired advocates, and their testimony nothing more than studied argument in favour of the side for which they are called. So uniformly has this proved true in our limited experience, that it would excite scarcely less surprise to find an *expert* called by one side testifying to any particular in favour of the other side, than to find the counsel upon either side arguing against their clients, and in favour of their antagonists."

[2] Redfield on Wills, ch. iii., § 13. See Gay *v.* Mut. Ins. Co., 2 Biglow's Life Ins. Cas. 14, 9 Blatchf. 142, per Woodruff, J.

tiously disposed, they are incapable of expressing a candid opinion."[1].

§ 487. **The Reason for this Caution in the Reception of Skilled Testimony.**—It cannot be doubted by any one who has paid even a trifling attention to the subject that the caution with which the Courts have been in the habit of receiving this kind of evidence was well advised. Every thing that is objective is capable of confirmation. Thus a fact can, although it is sworn to by one person, be disproved by others; but opinion, in that it is subjective, is capable neither of confirmation nor of disproof. Can it be wondered, then, that individuals who are called upon to express their opinions are much less careful than those who come to speak to facts? This of itself takes away much from the value of such testimony. But, again, to judge of the value of an opinion one must be made aware of the real capacity of the individual who expresses it to form one. Not every medical practitioner, it will be admitted, is capable of forming a correct estimate of the value of certain diagnostic symptoms of an obscure brain disease. This again, then, introduces a large element of doubt and uncertainty, and shows how wise our courts of law have been in attaching very little weight to the evidence of skilled witnesses who expressed only opinion.

§ 488. **Medical Estimate of its Worth.**—Medical men have, to do them justice, seen the advantage which would accrue to them if they could induce courts of law to accept their opinions as if they were facts, and a good deal of the vituperation about "frowning down psychological truth" is occasioned by the refusal of our judicial authorities to do anything of the sort. Thus Dr. Maudsley, who claims that medical men alone ought to be asked to decide whether insanity exists or does not exist, speaking of the experienced

[1] Taylor on Evidence, p. 73, § 50. See also the charge of the Lord Justice Clerk in the case of The Lord Advocate *v.* Gibson, a very important case which was tried before the High Court of Justiciary on 23d December, 1844, 2 Broun, 332, at p. 358, where he puts the subject in its true light. See also The Lord Advocate *v.* Murray, 1 Irvine, 263; Morrison *v.* Maclean's Trustees, 24 Dunlop, 625, and 34 Jur. 311.

physician, says: "He may not always be able to impart to others an exact account of the steps by which he has reached his conclusions, unconscious acquisition and instinctive decision preceding conscious method and deliberate judgment, but his opinion may still be sound." May still be sound! And it is for this we are to deprive judge and jury of their functions and leave the determination of the guilt or innocence of every criminal in whose case there is a suspicion of insanity—and in what case is there not such a suspicion?—to be determined by medical men who are only to be required to decide instinctively, to acquire the facts unconsciously, and who are not to be trammelled by the necessities which are incumbent upon all peddling human beings, of conscious method and deliberate judgment. There never was such a ridiculous attempt to revive the sway of authority, which would be the apotheosis of ignorance. For it is ignorance which wants to be believed without reason, it is ignorance which relies upon unconscious acquisition and instinctive decision. Knowledge is content to show the facts upon which it is founded: it can explain every step which brought it to its position of certitude, and can prove the deliberation of its judgment. No wonder courts of law have had a distaste for skilled witnesses, and especially for medical experts. But let us look at the law of the subject.

§ 489. **Testimony: its Objects considered.**—The object of all evidence is to place the jury in the position of eye and ear witnesses of a certain event, or a certain series of events, and the theory of the law in so bringing the facts representatively before the jury is that they, as ordinary men, uninfluenced by favor or fear, by hatred or love, will be able to judge of the guilt or innocence of an individual if thus brought to view the act and the actor at the time the deed was done. No doubt, a person who saw a deed done might best say, first, who it was that did it, and, second, if it was done in anger or self-defence; but such an one might, and probably would, scarcely have that calmness and impartiality which would make a decision just and right, and the law, by saying we will call those who saw the deed before twelve unprejudiced men, and ask them to decide upon the question of

guilt or innocence, has, it seems to us, done well. But evidence is not always thus direct. Frequently acts are done when no eye or ear is near to see or hear what transpired. Thus, take the case of a murder. No one, say, saw it done, but some one saw a man near the place where the murder was committed. Another person saw the same man washing his hands in a roadside pool; another saw him burn a shirt; and a fourth recognized a knife which was found near the victim as one which had been in the possession of the man who was seen near the place, who was seen washing his hands, who was seen burning the shirt. All these persons speak to facts. They say what they saw, and it is for the jury to draw or not to draw the inference whether the man who is sworn to as having done these several acts was the person who committed the murder.

§ 490. **Testimony of Experts.**—But there are many cases in which the jury, simply from the statement of facts, would be unable to draw any correct inference—cases in which a correct inference depends upon a knowledge of certain facts which do not lie within the bounds of ordinary experience; and in such cases the law has allowed skilled witnesses to be called, with the intention, as it seems to us, of supplying the peculiar experience which the jury, as ordinary men, are supposed to lack.[1] Thus, suppose in the case of the finding of a dead body, that a little wound is observed upon the corpse, and further, suppose that some one, the accused, was seen to inflict this little wound, then the whole question as to the guilt or innocence of the accused will turn upon the consideration of the question as to whether the wound found caused death.[2] People do die suddenly, and if an individual liable to heart disease died after a quarrel in which some one

[1] See McFadden *v.* Murdock, 1 I. R., C. L. 211. The rule is that witnesses possessing peculiar skill may be examined when the question to be decided so far partakes of the character of a science or an art as to require a course of previous habit or study in order to obtain a competent knowledge of its nature. 1 Smith, L. C. 491, note to Carter *v.* Boehm, 3 Burr. 1905. Although an expert must have *special knowledge*, no rule can be laid down as to the extent or amount of such knowledge necessary to entitle a man to be considered an expert. Ardesco Oil Co. *v.* Gibson, 63 Pa. St. 146; State *v.* Wilcox, 57 Barb. (N. Y.) 604; Fairchild *v.* Bascomb, 35 Vt. 398.

[2] Shelton *v.* State, 34 Texas, 662.

had inflicted a wound, which wound had nothing to do with the cause of death, the person causing the wound is evidently not guilty of murder. So in the supposititious case, the preliminary question for the jury to decide before coming to a conclusion as to the guilt or innocence of the accused is, whether the wound could cause death. Now, the experience of medical men is supposed, on the ground of the maxim that "every person should be believed in his own art," to be the same in relation to those matters that the experience of ordinary men is in relation to matters of business; and in such a case it has been customary to summon a medical man, not merely to speak to a fact—say of the existence of the wound—but to draw an inference from the facts—say of the size, the nature, the position of the wound—either observed by himself or described to him by what he has heard in court, and to say whether such a wound could cause death.

§ 491. **Opinion on Case as Proved.**—But, although the opinion of witnesses founded on the case as proved by other witnesses at the trial is admissible,[1] it must be the opinion of a witness possessing peculiar skill, and it must be in a case in which, from the nature of the circumstances, inexperienced persons have not the means, or are unlikely to prove capable, of forming a correct judgment without assistance.[2] A witness not a professional expert is not competent to express a general opinion on the question whether an individual was sane or insane. Though when examined as to what he himself witnessed in regard to such individual, he may state the impression produced on his mind by what he observed,[3] but he must state, if required, the facts from which his opinion is formed, so that the jury can judge of the value of his opinion.[4] This witness, then, is a medical expert.

[1] Rex *v.* Wright, Russ. & R. 456; Rex *v.* Searle, 1 Mood. & Rob. 75, per Parke, J.; Fenwick *v.* Bell, 1 Car. & K. 312; Beckwith *v.* Sydebotham, 1 Camp. 117; Collett *v.* Collett, 1 Curteis, 687.

[2] McFadden *v.* Murdock, 1 I. R., C. L. 211.

[3] O'Brien *v.* People, 36 N. Y. 276; Clapp *v.* Fullerton, 34 N. Y. 190. See also State *v.* Pike, 49 N. H. 399, per Doe, and authorities there cited.

[4] Culver *v.* Haslam, 7 Barbour, 314; Rambler *v.* Tyron, 7 Serg. & Rawle, 90; Clapp *v.* Fullerton, 24 N. Y. 190.

§ 492. **In what Cases Called.**—In other cases medical men are summoned to give the jury the advantage of that professional skill and peculiar experience which is necessary to the due understanding of the point at issue, and to the justness of the inferences which they have to draw from the facts proved. Thus, in many cases, questions as to the causes of disease, the treatment of sickness, the precise period of death, and the presumution of survivorship, or the chance of recovery, must come before courts of law, and in such cases it has been usual to have recourse to the opinions of medical experts. In no class of cases, however, has it been so frequent to ask medical men to assist the jury to draw inferences as in cases in which the sanity or insanity of an individual was in question, and in relation to no class of cases has the admissibility of this kind of evidence been so much canvassed.

§ 493. **Theory of the Admissibility of such Evidence.**—The theory of the admissibility of this kind of evidence seems to us to be this: The law, finding that technical knowledge was necessary in arriving at conclusions in many cases, allowed witnesses to be called to supply that technical knowledge. The true method of placing the jury in possession of the required knowledge was by tracing some of the general principles of the science without reference to the individual case. The object was to make the jurymen medical men in relation to the point at issue, yet to leave them ordinary unskilled individuals in relation to the facts of the case which were to be gauged by their own common sense and everyday experience. To do this, it was necessary to put the jury in possession of medical experience in relation to the case, but as the jury could not go through the medical man's practice or walk the hospital with him, it became usual to allow the medical man to give the jury the result of his experience *quo ad* the point in question, that is to say, the medical man was allowed to express an opinion.

§ 494. **Experts not to Usurp Functions of Jury.**—But one thing at once became evident, and that was, that if medical men were to be allowed to express an opinion, say as to

the sanity or insanity of an individual in a case where the question of guilt and innocence turned upon that of mental soundness or unsoundness, the functions of judge and jury would thereby become a farce. The jury would have simply to endorse the medical man's opinion, and the institution of trial by jury, which, as Burke has said, is the object of the whole British constitution, including two Houses of Parliament, King, and all the rest of it,[1] would be nothing more than an elaborate and ridiculous absurdity. But we do not trust the high function of decision as to guilt or innocence in any case to one man, even when he could be confronted by facts which are cognizable to the community; and it would be miserably advised to trust such a function to one medical man, when the public would not be in a position to review his decision, and when the administrators of law have, from long and intelligent experience, come to the conclusion of the general worthlessness of the evidence of experts.[2] The real use of experts really was to explain to the jury how they might themselves come to a conclusion as to a disputed point, not to come to a conclusion for them.

§ 495. **New Doctrine as to Skilled Witnesses.**—It is true that in New Hampshire, in 1871, judicial opinions were expressed that it was the function of experts to declare what irresponsibility is. In State *v.* Pike,[3] Doe, J., said: "The whole difficulty is that courts have undertaken to declare that to be law which is matter of fact. The principles of the law were maintained at the trial of the present case, where experts having testified, as usual, that neither knowledge nor delusion is a test, the Court instructed the jury that all tests of mental disease are purely matters of fact, and that if homicide was the offspring of mental disease in the defendant, he was not guilty by reason of insanity." The doctrine that responsibility is a question of fact to be determined by the jury, on the evidence of experts, has been adopted by Dr. Mauds-

[1] It was all to him, only the "method of getting twelve jurymen put into a jury box."

[2] See ante § 486. See also as to experts in military practice, Bradley *v.* Arthur, 4 Barn. & C. 293, 305, 307, 311.

[3] 49 N. H. 399.

ley, who sees in these New Hampshire decisions "an advance upon any judgment concerning insanity which has been given in this country. They put in a proper light the relations of medical observations to law in questions of mental disease."[1] These views are not only in conflict with all judicial authority both in this country and in America, which held and holds that although experts may be called to testify as to states of mind and conditions of health, it is for the Court to declare whether such states or conditions constitute irresponsibility, but are at variance with the true principles of reason, and have been repudiated both by jurists and physicians in America.[2]

§ 496. **Cases in which Expert Evidence has been had Recourse to.**—Thus in old days it was usual to call frank inspectors who were supposed to be qualified to speak as to handwriting, and in our own time we have an expert whose skill and opinion is much respected in cases where it is necessary to discover the identity of, or differences in, written documents. But in those cases the expert not only says, "I think these are written by the same person," but he says, "I have come to that conclusion because in each of these writings the *i* is formed thus, and the *b* thus," and so on, and in this way he gives the jury the means of judging of the correctness or incorrectness of his inference.[3] So in cases where antiquaries have been examined as to the date of a certain document, or artists as to the originality of a picture,[4] or where an expert has been asked his opinion as to whether coins have been stamped in the same die, or whether wines have been taken from the same bin, in all these the skilled witness could give the grounds of his opinion; and if these seemed frivolous or insufficient, his evidence might be rejected by the jury.[5]

[1] Responsibility in Mental Disease, pp. 105, 106.

[2] See Wharton on Mental Unsoundness and Psychological Law, 3d ed. 1873, §§ 190, 199.

[3] Revitt *v.* Braham, 4 T. R. 497; Moody *v.* Rowell, 17 Pick. 490; Com. *v.* Carey, 2 Pick. 47; Lyon *v.* Lyman, 9 Conn. 55; Lodge *v.* Phipher, 11 Serg. & R. 333.

[4] See Folkes *v.* Chadd, 3 Doug. 157.

[5] Naturalists who have observed the habits of certain fish have been permitted to state their opinion as to the ability of fish to overcome particular obstructions in a

§ 497. **Expert's Opinion on Evidence Adduced.**—The great difficulty arose, however, when experts were asked to come to a conclusion from the evidence they had heard. In such cases, they were asked to do what the jury was there to perform. And it became necessary to frame some rule of law which would at the same time give the jury the advantage of the expert's skill and still preclude the injurious influence upon their minds of an expression of opinion—of a person who came there with a reputation for knowledge—upon the very point they had to decide. On examination, the cases will show the expedients which were devised to effect this double purpose.

§ 498. **Questions which may be Put.**—At the trial of Earl Ferrers in 1763, his counsel proposed to ask a medical witness "whether any and which of the circumstances which had been proved by the witnesses are symptoms of lunacy?" This question was objected to by the Attorney-General, and Baron Henley, observing that the question "tended to ask the doctor's opinion upon the result of the evidence," said that he "must be asked whether this or that fact is a symptom of lunacy."[1] Here there was an effort to get at the advantage of the medical experience without the disadvantage of a decision upon all the facts proved, which was obviously a question for the jury. On the trial of McNaughton,[2] an expert, who had heard the whole trial, was asked the question, "Judging from the evidence which you have heard, what is your opinion as to the prisoner's state of mind?" and it was not objected to. This question was evidently open to

river which they are accustomod to ascend. Cottrill *v.* Myreck, 3 Fairf. 222. It has been held that the question whether two pieces of wood were parts of the same stick of natural growth is a question for an expert. Commonwealth *v* Choate, 105 Mass. 451. See also Folkes *v.* Chadd, 3 Doug. 157; Ashby *v.* Lill, 5 Bing. 299.

[1] 19 Howell, 943. Lord Brougham, too, was of the opinion that it was well to preclude the medical witness from giving an opinion on the evidence, and regarded him only as a guide to the jury, a dictionary in which they might look and see if a certain act was an indication of insanity. "You shall ask them," he says, "if such an act is an indication of insanity or not: you shall ask them, upon their experience, what is an indication of insanity. You shall draw from them what amount of symptoms constitute insanity, but you must not ask a witness whether the facts sworn to by other witnesses preceding him amount to a proof of insanity."—67 Hansard, 614.

[2] 10 Clark & Fin. 200.

objection on the ground that before coming to any conclusion as to the state of mind of the prisoner, the medical man had in the first place to make up his mind as to the truth or falsehood of the facts deposed to. In the answers of the Judges to the questions which the House of Lords, after the trial of McNaughton, proposed to them, they said: "Where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the questions to be put in the general form, yet the same cannot be insisted upon as a matter of right." In a case which was tried some six years after that last alluded to, a counsel proposed to ask a physician who had heard all the evidence, whether, from what he had heard, he was of opinion that the prisoner was, at the time he committed the act, of unsound mind. Baron Alderson would not allow the question to be put, and said that he was quite sure the decision with reference to a similar question in the McNaughton case was wrong. "The proper mode," he said, "is to ask what are the symptoms of insanity, or to take particular facts, assuming them to be true, to ask whether they indicate insanity upon the part of the prisoner. To take the course suggested is really to substitute the witness for the jury, and to allow him to decide upon the whole case."[1]

§ 499. **American Rule.**—A similar rule of law has been laid down in America. The Supreme Court of Massachusetts, in The Commonwealth *v.* Rogers,[2] said: "The proper question to put to the professional witness is this, 'If the symptoms and indications testified to by other witnesses are proved, and if the jury are satisfied of the truth of them, whether, in their opinion, the party is insane.' They are not," the Court went on to say, "to judge of the credit of the witnesses, or of the truth of the facts thus testified by others. It is for the jury to decide whether such facts are satisfactorily proved or not."

[1] Regina *v.* Frances, 4 Cox C. C. 57. See also Doe (d.) Bainbrigge *v.* Bainbrigge, 4 Cox, C. C. 454, per Lord Campbell. See also the judgment in The People *v.* Lake, 12 N. Y. 358; Carpenter *v.* Blake, 2 Lans. (N.Y.) 206; Tingley *v.* Cowgill, 48 Mo. 291.

[2] 7 Metcalf, 500.

§ 500. **What Questions have been Allowed.**—This rule has also been put in force in cases in this country other than those in which the question of mental soundness or unsoundness had to be decided. Thus it was held that in an action for unskilfully navigating a ship, though a Master of Trinity House or other nautical witness cannot in strictness be asked whether, after having heard the evidence, he thinks the ship was properly or improperly navigated, for in answering such a question the witness would have to draw a conclusion of fact as well as to give an opinion upon it,[1] yet he may be asked what judgment he can form on the subject, assuming the facts stated in evidence to be true.[2]

§ 501. **Questions which may not be Put Directly may be Put Hypothetically.**—Another device to effect the same purpose has been put in practice. It has been held that although the counsel must not put the question, "What is your opinion as to the state of the prisoner's mind at the time he committed the act?" he may put the question hypothetically, that is, by desiring the witness to assume such facts to be true, and then state his opinion as to the prisoner's state of mind.[3] This rule has been adopted in the United States. It was laid down in the Supreme Court of New York, in The People *v.* Thurston,[4] that a medical witness may give his opinion on a hypothetical statement of facts, and it will be for the jury to judge whether the supposed facts so stated correspond with the facts as proved. And Mr. Justice Curtis, who presided at the case of the United States *v.* McGlue,[5] said that medical experts were not allowed to give their opinions on the case. "It is not the province of the expert to draw inferences of facts from the evidence, but

[1] Sills *v.* Brown, 9 Car. & P. 604, 605, per Coleridge. See also Jameson *v.* Drinkald, 12 Moore, 148.

[2] Fenwick *v.* Bell, Car. & K. 312, per Coltmans, J.; Malton *v.* Nesbett, 1 C. & P. 70, per Abbott, C. J. See also Beckwith *v.* Sydebotham, 1 Camp. 117.

[3] Rex *v.* Wright, Russ. & R. 456. See Reg. *v.* Higginson, 1 Car. & K. 129.

[4] 2 Parker's Criminal Reports, 49. See also Carpenter *v.* Blake, 2 Lans. (N. Y.) 206; Tingley *v.* Cowgill, 48 Mo. 291.

[5] 1 Curtis, 1. See also Woodbury *v.* Obear, 7 Gray, 467, 471; The State *v.* Windsor, 5 Harrington, (Del.) 512; The People *v.* McCann, 3 Parker's Cr. (N. Y.) 272; McAlister *v.* The State, 17 Ala. 434. But see Negro Jerry *v.* Townshend, 9 Md. 145.

simply to declare his opinion on a known or hypothetical state of facts, and, therefore, the counsel on each side have put to the physicians such states of facts as they deemed warranted by the evidence, and have taken their opinions thereon. If you consider any of these states of facts put to the physicians are proved, then the opinions thereon are admissible evidence to be weighed by you. Otherwise their opinions are not applicable to this case."[1]

§ 502. **Objections to this Rule considered.**—Dr. Ray sneers at this rule of law, and objects that it is one of the worst ways of getting any one's opinion to put a hypothetical case, that lawyers would refuse to advise upon such conditions, that such a method violates one of the settled rules of philosophy, that the hypothetical case put will be the very case which is in court, and that consequently the opinion of the expert will weigh just as much with the jury.[2] But Dr. Ray is one of those who thinks that implicit faith should be placed in the opinion of experts, and no wonder, for is not Dr. Ray himself an expert? To the objection that "perhaps the opinion of the expert may be decisive of the question at issue, and thus determine the verdict," he says: "And why should it not? if that opinion is correct it would be highly reprehensible in the jury to disregard it." Yes, if it is correct, but the chances being that it is incorrect, is it fair to allow the jury to be subjected to the pressure of this disturbing influence? The wisdom of some of the best heads has decided that the rule is a good one, and for very obvious reasons.

§ 503. **The Use of these Devices.**—The opinion of the expert is of use, as we have seen, to aid the inexperience of the jury, but it would be most improper to allow such opinion to control their verdict. A juror is sworn to give a true verdict according to the evidence, but the private judg-

[1] Dr. Walker, (Boston, Mass.) in speaking on this subject at the meeting of the medical superintendents of American Institutions for the Insane (1872), said: "I think for my own part, for comfort and convenience every way, I would as soon be examined in any case by hypothetical questions as on the testimony."—Rep. of Proceedings, p. 86.

[2] Med. Jur. Insanity, 5th ed., p. 638, *et seq.*

ment of an individual, learned or unlearned, does not really fall under that category. In order, therefore, to get all the advantage of the expert's experience, with as little as possible of this controlling force, the law has allowed only hypothetical and speculative questions to be put to him. In this way, his brain is sucked of the essence of its experience, and he is at the same time as far as possible precluded from influencing the verdict of the jury. This is an exactly similar device to that already described of making the medical man take for granted the truth of all the evidence. By each method the expert's skill is made use of as a guide, without being a governor of the will of the jury. Both in this country and in America there is cause for complaint that "physicians are mostly inclined to excuse many wrong acts of individuals on the grounds of disease;" and that "juries are inclined, in too great a degree, perhaps, to take the opinion of a physician of good reputation and standing as to the insanity of an individual."[1] It is well, then, that there should be a means by which the testimony when received—and it should always, as we have seen, be received as of very inferior worth—may be prevented from doing the mischief it is only too apt to do. Some such rules of law were absolutely necessary.

§ 504. **General Worth of such Testimony.**—One or two other principles which are applicable to the reception of this kind of evidence must be alluded to. Its general worth has been estimated by an American Court. "Great respect," it said, "should be paid to the opinion of such a class of witnesses, but they are no more *controlling* than those of any other body of men when speaking upon subjects which lie within the range of common observation and experience."[2]

§ 505. **Where Inquiry is as to Subject which does not require Skill.**—One thing it is most important to note, and that is, that where an inquiry relates to a subject which does not require any peculiar habits or course of study in order to

[1] Juries and Physicians on Question of Insanity, by R. S. Guernsey, Esq., of the New York Bar.

[2] Brehm *v.* Great Western Railroad Co., 34 Barbour, 256.

qualify a man to understand it, the evidence of experts is not admissible. Thus in our own courts opinions as to moral and legal obligations, or as to the manner in which other persons would probably have been influenced have been held inadmissible.[1] So the opinions of medical pratictioners upon the question, as to whether a certain physician had honorably and faithfully discharged his duties to his medical brethren has been rejected, because on such a point the jury was as capable of forming an opinion as the witnesses themselves.[2] Neither is the opinion of one expert as to whether a certain state of facts was enough to justify another expert in the formation of an opinion admissible.[3] Upon this the main point of the inadmissibility of the evidence of experts concerning which the ordinary experience of mankind is a sufficient means of knowledge, one or two other cases may be mentioned. In The People *v.* Bodine,[4] in which it appeared that a corpse had been found partially burned and certain portions of the body, covered with loose clothing, were not burned, the opinion of a medical man that the person must have been dead before the fire broke out, as otherwise the covering would have been disturbed, was held inadmissible testimony. In another case, it was decided that the question whether a wound was caused by a blunt instrument or not, is not a question for scientific opinion.[5] So in Kennedy *v.* People,[6] it was held that the opinions of the medical witnesses as to position of the body when struck, inferred from the nature of the wound they examined, were not admissible as evidence.

§ 506. **Medical Experts in Cases of Insanity.**—Now as the question of the sanity or the insanity of an individual is a question of conduct, as well as a question of nosology, as a man is regarded as insane who acts in a way different from that of the majority of his fellows, it might well seem that

[1] Campbell *v.* Rickards, 5 Barn. & Adol. 846. See also St. Louis Mut. Ins. Co. *v.* Graves, 6 Bush, (Ky.) 290.

[2] Taylor on Evidence, p. 1226.

[3] People *v.* Hartung, 17 How N. Y. 11; Tullis *v.* Kidd, 12 Ala. 634.

[4] 1 Denio, 281.

[5] Wilson *v.* People, 4 Parker's N. Y. Criminal Reports, 619.

[6] 5 Abbott, N. S. 147.

the evidence of the experts in such cases was inadmissible. It has been maintained on high authority that persons of common sense, conversant with the world, and having a practical knowledge of mankind, if brought into the presence of a lunatic, would in a short time find out whether he was capable or not of managing his own affairs.[1] Dr. Ray, too, in some useful hints to medical witnesses, advises them to be prepared with "a well ordered, well digested comprehensive knowledge of mental phenomena in a sound as well as an unsound state," and recommends Shakespeare and Molière as preferable text books to Stewart and Locke, showing that it is the practical knowledge of character in its relation to conduct that he regards as the most important requisite, in the way of knowledge, of a medical witness.[2] Mr. Guernsey, in the pamphlet to which we have already had occasion to refer, says: "There is no question that arises in the administration of the law where expert testimony may be less necessary, and where it should be less controlling on a jury, and where the common observation and experience of men should prevail over all theory as in cases of alleged insanity."

§ 507. **The Use of Experts in such Cases.**—There is some truth in this view of the matter, and it is only natural that after a long experience of rash witnesses, who having really no right to an opinion at all, have expressed crude generalizations with an imperturbable effrontery; after a harassing experience of the unbounded demands of alienist physicians to be believed with an implicit faith which was only compatible with the grossest ignorence, lawyers should

[1] It is a well understood rule of law that witnesses not experts may state their opinion, based on personal observation, as to a person's sanity. See Wright *v.* Tatham, 5 Cl. & Fin. 670; 4 Bing. N. C. 489. See also the elaborate judgment of Doe, J., in State *v.* Pike, 49 N. H., 399, where the English and American authorities are fully quoted. See also Boardman *v.* Woodman, 47 N. H. 120; Wheeler *v.* Alderson, 3 Hagg, 574; Rambler *v.* Tryon, 7 Serg. & R. 90; Wogan *v.* Small, 11 Serg. & R. 141; Wilkinson *v.* Pearson, 23 Pa. St. 117; Grant *v.* Thompson, 4 Conn. 203; Kinne *v.* Kinne, 9 Conn. 102; Doe *v.* Regan, 5 Blackf. 217. But see Gibson *v.* Gibson, 9 Yeger, 329; Farrell's Admr. *v.* Breman's Admr., 32 Mo. 328; Turner *v.* Cheesman, 15 N. J., Ch. 243; Townshend *v.* Townshend, 7 Gill, 10; Dorsey *v.* Warfield, 7 Md. 65.

[2] He says: "The expert should learn to distinguish the thoughts and manners of the one condition from those of the other, and endeavour to gain a ready perception of the general air and tone characteristic of each," (Medical Jurisprudence of Insanity, p. 622, or in other words improve the general experience of mankind.

assert the utter uselessness of the evidence of scientific witnesses in relation to questions of insanity. But although we would guard against too great weight being attached to the opinions of experts, while we would prevent as far as possible an undue influence of their opinions on the minds of the jury in relation to the particular case, we would be unwilling to exclude experts from courts of law. It is true that insanity is to be judged of from an observation of the conduct of the persons whose mental condition is in question, in relation to the ordinary conduct of mankind, but in many cases of insanity the aberration only manifests itself at rare intervals, or in relation to particular persons, things, or circumstances. The conduct of the individual may be exactly like that of ordinary men and women except at particular times or when the individual is particularly circumstanced. In such a case the ordinary experience of mankind would be a sufficient guide to a correct conclusion as to the mental condition of the accused if the attention of the jury was called to that particular phase of the disease, and to the fact that what is alleged in relation to the accused has been observed in collateral cases, and for this purpose we cannot but regard skilled witnesses as likely to be of use in the careful administration of the law. We would, however, almost feel inclined to allow the jury to find a verdict subject, if they thought right so to leave it, to an opinion upon the part of an unbiassed expert that the person was sane or insane, as the case might be. The expert would not in this way be brought before the jury, and would not be examined as a party witness but as a witness for justice. His opinion on the facts submitted to him would thus become a valuable precedent, and the decisions of a succession of experts, guided each by the written judgments of their predecessors, and amenable to public criticism, would become a valuable body of medical decisions.

§ 508. **Witness may Refresh his Menory with Books.**— One or two other remarks may be made with reference to the evidence of skilled witnesses. They may refresh their memories by referring to professional treatises. This fact seems scarcely to be known to medical men. It is true that medical

books are not directly admissible in evidence,[1] but although it has never been definitely sanctioned, it seems the better opinion, that a physician may strengthen his recollection by referring to such works as he considers authorities, and may, after such reference, be asked if his judgment is thereby confirmed.[2] And a medical witness has been examined as to whether he has not in the course of his reading found a certain mode of treatment prescribed, and he has been permitted to state that his judgment has been founded in part on the writings of his professional brethren.[3]

§ 509. **Decreasing Value of Expert's Testimony.**—The whole question of the expediency of the admission of the evidence of skilled witnesses has been in considerable obscurity, and the tendency of the times seems rather to be towards the limitation of the recourse to this means of knowledge. This might have been expected. These are the days of wide-spread information, and the more knowledge widens the more information becomes general, the less will be the necessity for the special teaching of experts upon every little minute point which might formerly be regarded as a subject of science and art. When no one was able to write, experts in handwriting were a necessity, and the same remark is true of other matters. The smattering of science which is scattered about by a teeming press and from thousands of platforms, goes far to make the explanations of the expert, as to the facts upon which his opinions are founded, the more easily appreciable by the juries of our courts. Still cases do occur in which experts must be employed, and we have endeavored in this chapter to point out the doctrines of the admissibility of skilled testimony and to show the worth of such evidence when it is received. We would desire, in conclusion, if we might do so without presumption, to offer one or two hints to those members of the medical profession who

[1] Collier *v.* Simpson, 5 Car. & P. 74, per Tindal, C. J.; Cocks *v.* Purday, 2 Car. & Kir. 270.

[2] Taylor on Evidence, p. 1230, § 1279.

[3] Collier *v.* Simpson, 5 Car. & P. 73. Thus foreign lawyers called to prove a foreign law may refer to text books, statutes, codes, etc. As to American law, see Com. *v.* Wilson, 1 Gray, 337; Washburn *v.* Cuddihy, 8 Gray, 430; Ashworth *v.* Kittredge, 12 Cush, 193; Bowman *v.* Woods, 1 Iowa, 441; State *v.* O'Brien, 7 R. I. 336.

may be called upon to give evidence in courts of law, and who may have had little experience of what is to some a trying ordeal.

§ 510. **As to Manners.**—We certainly do not presume to teach members of the medical profession how to behave. Medical men have experienced the refining influence of a long, laborious, and scientific education. They are men not only of the world but of the sick chamber, where the best manners in the world find place; but we would warn them that even those with the best control over their actions and thoughts are often thrown off their guard by the unusual and often exasperating circumstances which are associated with an appearance in court as a witness. We need not suggest to them what has been said by some writer, that the best proof of good breeding in these days is keeping one's temper. The days when a phrase like "as drunk as a Lord" was applicable, when a voluble volley of expletives was a sign of haut-ton, and when the Mohock Club still existed, have luckily passed away; and if there is one unmistakeable sign of good breeding, it is calmness. We fully appreciate the difficulty of the position medical men are placed in. We have felt repeatedly that it must be almost impossible to remain perfectly self-possessed under the circumstances in which we have seen able men of science placed, but we have always thought that the medical witness, by keeping his temper, baffled the counsel, whose very object was to cause him to show ill feeling. There is one other point which we must apologise for mentioning. Besides the general courteousness of manner which will, we are certain, characterize the conduct of every member of a liberal, learned, and humane profession, it is well for those who are called into courts of law to remember that the court is a court of justice, and if opportunity should offer, as it often will, of turning the hose of ridicule upon the counsel and deluging him with laughter, it is more dignified in the scientific witness to refrain from doing so. "The tricks of counsel are unworthy of the character of a scientific witness."[1] It is well for the witness to

[1] Handbook of Law and Lunacy. By Sabbin & Browne. London: 1872.

speak distinctly, for young members of the legal profession will often assert their own trivial authority, and endeavor to flurry a witness by shouting to him to "speak out."

§ 511. **Communications to Medical Men not Privileged.**—It is well for medical men to bear in mind that any statements which may have been made to them, even under promise of secrecy, and on the understanding that it was communicated in the strictest professional confidence, is not privileged from disclosure in court.[1] Their oath compels them to open such secret if questions are asked, and it may, therefore, be prudent for medical men to warn those persons who are anxious to repose dangerous confidences in them that in the event of any legal inquiry their secrets may be opened to the public in consequence of this rule of law.

§ 512. **How Evidence ought to be Given.**—Answers given in courts of law ought always to be direct and specific. If a witness is asked what a man *said*, it is not an answer to say, "He promised to go with me." That would evidently be a good answer to the question, "Did he promise to go with you?" but not to the question, "What did he say?" The shorter, more specific, and categoric the answer the better. Where a short answer, although sufficient for the question, only contains half the truth, the medical witness may ask the Judge's leave to make such an explanation as will bring out the whole truth; but such a demand is rather uncomplimentary to the counsel on the other side, who may be supposed to have seen that a false impression was conveyed by the answer, and to have purposed eliciting the actual facts by further questions. It need scarcely be said that all argument upon the part of a witness, while in the witness box, is ill advised. He will, for the most part, get the worst of it; and even if he should be successful, he gains a victory at the cost of a sacrifice of duty. Argument, however, is often due to the worse fault of animus. Feeling strongly on one side

[1] Duchess of Kingston's Case, 20 H. St. Tr. 572, *et seq.;* Rex *v.* Gibbons, 1 Car. & P. 97. Best, in his Principles of the Law of Evidence, speaks of this rule as "harsh in itself, and of questionable policy." It is not the law in France, (see Romier, Traité des Preuves, § 179,) nor in some of the United States.—Appleton's Evid., App. 276.

or the other, and manifesting that feeling, is at the very least an unpardonable rudeness. To show an intolerance of the belief that the other side from that on which you yourself are summoned, may have the truth, shows that in your estimation the patient investigation of the Court is thrown away. Besides, a witness is there to speak what he knows, not to advocate what he believes. The display of animus deprives the evidence given of its weight, and brings ridicule and disgrace upon the witness himself and upon the profession to which he belongs. Many witnesses become eager in the witness box—eager to tell all they know, eager to appear to be well informed, eager to volunteer evidence; and all such conduct is in a witness most imprudent. The witness is there to answer questions, and may, as a rule, take it for granted that either counsel or the Court will elicit all that is necessary to the ends of justice. If a question which the witness regards as important is not asked in the examination in chief, it may be put by the adverse counsel in cross-examination, or even if the counsel fail to see its value, if it has any, the Judge will, in all probability, perceive its importance and put it himself. If it is not asked at all, the witness may take it for granted that he has made a mistake either as to its value or relevancy, and in such a case he had better hold his tongue. There is no more dangerous witness than he who proves too much.[1] These advices seem to us, even as we write them, to be impertinences. Scientific witnesses will not, we are certain, forget themselves in any such way as that indicated above. Yet we have ourselves seen one or two instances in which such obvious rules have been forgotten under the vexatious and worrying process to which learned witnesses are subjected, and consequently we have to urge that patience which becomes and so much redounds to the credit of the true man of science.

§ 513. **Use of Notes in the Witness Box.**—Where a medical witness is asked as to any fact or circumstance which may lie in memory, he may use notes of dates to refresh his memory during his examination.[2] And any writing which

[1] See Hints to Witnesses in Courts of Justice, by a Barrister (Baron Field.) London: 1815.

[2] Kensington *v.* Inglis, 8 East, 289.

was made at the time of any interview or event concerning which he is questioned may be used by him for the same purpose, but he is not allowed to have recourse to a copy of such notes or to an extract from a book, although such copy or extract may be made by himself.[1] Further, if a medical man, called to give his opinion as a matter of skill, has made a report of the appearances or state of facts at the time, he will be allowed to read it, if his counsel desire it as a part of his evidence. In Scotland, on the other hand, the scientific witness is always directed to read his report as affording the best evidence of the appearances he was called upon to examine, yet he may be, and generally is, subjected to further examination by the prosecutor, or to a cross-examination on the prisoner's part, and if he is called on to state any facts in the case unconnected with his scientific report, as conversations with the deceased, confessions made to him by the prisoner, or the like *utiter jure communi*, he stands in the situation of an ordinary witness, and can only refer to the memoranda to refresh his memory.[2]

§ 514. **Tricks of Counsel.**—The medical witness will do well to be on his guard against the many ingenious contirvances which counsel are only too apt to resort to in order to break down the evidence of a witness, or to make his testimony appear ridiculous in the eyes of the jury. One of the most common of these in cases in which the question of insanity is raised, is to ask the medical witness to define insanity. Now, although many definitions of insanity exist, it is not easy to see that any one of these is thoroughly satisfactory, and it is best to believe that the nature of insanity can better be distinguished from the nature of the sanity by description than by definition, but that although even to experience definition is difficult, recognition is easy. When the question is asked, the medical witness would do well to offer to describe it, and in doing so he should use plain, easily understood, terms. The description should be such as will enable the jury to form some idea of the condition de-

[1] Doe *v.* Perkins, 3 T. R. 749; Howard *v.* Canfield, 5 Dowl. P. C. 417,
[2] See Alison's Prac. Cr. Law of Scotland, 541.

scribed, and should therefore refer more fully to the observable phenomena of conduct, manners, and demeanor, rather than to the unobserved organic causes of these aberrations. It is to be remembered that the witness box is not the place for a metaphysical discussion, and that those medical men who are betrayed into the indiscretion of airing their theories in court are most frequently laughed at for their pains. Another common manœuvre of counsel is to separate all the symptoms of insanity which the medical man may have mentioned, and say, "Now, doctor, is it because he disliked his father-in-law that you say he was mad?" and having got a negative answer to that, he continues, "Well, was it because when he was up in life he became a dandy that you say he was insane? Come, doctor, what do you say to my learned friend there with the flower in his button-hole?" and so on. But the medical man ought to be prepared to answer that it is impossible in almost any case to diagnose insanity from one symptom, and that a skilful diagnost would be more powerfully influenced in coming to a conclusion as to sanity or insanity from an observation of a man's general character and conduct than from the observation of any particular act, however ridiculous and outré it might seem to be; and indeed that in many minds single eccentric traits may exist and yet the mind be, in every sense of the word, sane. Counsel are rather inclined to endeavor to bring ridicule by getting him to admit that he holds impracticably large and wide views with regard to mental disease. Thus we have heard a medical witness asked this question, "Don't you think that all people are more or less insane?" The medical man hesitated, and then thinking possibly that he was protected by the "more or less," said, "Yes." Then the counsel addressed the jury, and showed the utter worthlessness of the medical testimony. "What was the good of them believing that gentleman who had sworn that he regarded the testator as insane, when he admitted that he regarded everybody insane. You, gentlemen, my Lord, everybody insane! The world a great lunatict asylum! I don't think you'll place much reliance upon what *he* said." And it cannot be thought that the jury would. In a certain sense it cannot be doubted that there was some truth in the medical man's admission, yet to

leave the admission without an explanation that although sanity and insanity passed by imperceptible gradations the one into the other, although the proverb "no man is at all times wise," might with some truth be quoted as no man is at all times sane, that yet it was easy to distinguish those insane whom the law regarded as incapable of exercising civil functions, or of bearing responsibility and liberty, from those who were, and that in that sense all men were not more or less insane, although to the pathologist it might seem as if they were. We have no right to write upon etiquette, nor do we profess to do so, but we cannot refrain from saying one thing while we excuse ourselves for our didacticism. It is more graceful to confess ignorance than to be found ignorant after an affectation of knowledge, and it is much better for medical men when asked questions which they are unable to answer to confess that they cannot do so than to attempt to do a thing in which they must inevitably fail. There need be no discredit in confessing that the science of medicine is not a science of omniscience, and the witness who is cautious only to speak to what he actually knows, and who goes no further than his science allows, will carry more of the light of science into the administration of justice, and gain more personal respect from those with whom he is brought in contact, than the charlatan who wishes to appear more learned than he is, and brings discredit and contempt upon himself and the noble profession to which, unfortunately for it, he belongs.

CHAPTER XXVI.

PROOF OF INSANITY.

§ 515. **Scope of this Chapter.**—In this place we do not mean to speak of the actual evidence which will have to be adduced in each case to prove the presence of disease. The real character of such evidence is always to be ascertained from the real nature of the facts, and what we have said in other places with reference to the physical and mental characteristics of the morbid conditions which are for the purposes of law classed under the head of insanity, will be sufficient to indicate the character of the evidence which must be adduced in order to support a plea of insanity. Here, however, we are called upon to allude to and illustrate one or two legal principles as to the burden of proof, and as to the admissibility of evidence.

§ 516. **Presumptions.**—There has been some difference of opinion as to the true nature of a legal presumption. It has been argued, on the one hand, that legal presumptions are evidence, and on the other, that they are not. It has been maintained that as a presumption is to weigh in the absence of testimony on the one side, it is of the nature of evidence, and on the other hand, it has been held that it only establishes a point when there is no evidence, and that it cannot be said that the presumption of innocence is proof of the absence of guilt. To us it has always seemed that presumptions were to evidence what custom is to law. There are a great many things which lie in ordinary experience, and which, as they are known to the Court and jury, it is unnecessary to prove. Yet these experiences are of the nature of evidence, and if they were not known to the jury would have to be proved by testimony in the ordinary way. Now it is upon these current

experiences that presumptions rest. It is upon the current experience of the probity and honesty of the majority that we presume everybody to be innocent until proof of the contrary, and so in relation to sanity and insanity, our ordinary experience teaches us that the majority of men are sane, and consequently we presume every man to be sane until it is satisfactorily proved that he is not. Now presumptions being of the nature of evidence, are related to what is called the burden of proof, A man being presumed innocent, must before he can be convicted be proved guilty. Therefore, the burden of proof is upon him who impeaches. So in cases of supposed mental disease, the burden of proving insanity is upon those who assert it.[1]

§ 517. **Burden of Proof in relation to Wills.**—Every man being regarded as sane, every man is also regarded as capable, until the contrary appears.[2] It is, therefore, for those who assert that a testator was not in a condition to dispose of his property by will to establish that by proof.[3] American Judges, with that skittishness which has in many instances characterized their intolerence of the harness of authority, have in several instances attempted to force a different rule upon the law. Thus in the Parish will case the Court ruled: "1. That in all cases the party propounding the will is bound to prove to the satisfaction of the Court that the paper in question does declare the will of the deceased, and that the supposed testator was at the time of making and publishing the document propounded as his will of sound and disposing mind and memory. 2. That this burden is not shifted during the progress of the trial, and is not removed by proof of the factum of the will and the testamentary competency by the attesting witnesses, but remains with the party

[1] See as to rule in Scotland, Stair 1, 4, 6, and 1 Fraser's Family Relations, 45.

[2] Sutton *v.* Sadler, 3 C. B., N. S. 89, 96.

[3] Harris *v.* Ingledew, 3 P. Wms. 91; Stevens *v.* Vancleve, 4 Wash. C. C. 262; Temple *v.* Temple, 1 Hen. & Munf. 476; Saxon *v.* Whitaker, 30 Ala. 237; Trumbull *v.* Gibbons, 2 Zabriskie, 593; Hubbard *v.* Hubbard, 6 Mass. 397; Jackson *v.* VanDusen, 5 Johns. 144; Turner *v.* Cheesman, 15 N. J., Ch. 243; Cotton *v.* Ulmer, 45 Ala. 378; Bogardus *v.* Clark, 1 Edw. 266; Clarke *v.* Sawyer, 3 Sandford Ch. 351; Rees *v.* Stille, 38 Pa. St. 138; Wrestler *v.* Custer, 46 Pa. St. 502; Runyan *v.* Price, 15 Ohio St. 1; Thompson *v.* Kyner, 65 Penn. St. 368; Farrell *v.* Brennan, 32 Mo. 328.

setting up the will. 3. That if, upon a careful and accurate consideration of all the evidence on both sides, the Court is not judicially satisfied that the paper in question does contain the last will of the deceased, the Court is bound to pronounce its opinion that the instrument is not entitled to probate."[1] A similar rule has been laid down in other States[2]—why, it is somewhat difficult to see. The mere fact of having made a will cannot be regarded as having raised a presumption that the man who made it was insane. On the contrary, we should say that it appearing that a will had been made which dealt with the property of the deceased was in the absence of all proof some indication of mental capacity. That being so, surely it would require some proof to make it appear that the will was not executed by one who had the capacity to will or to know what he was willing. We cannot think that the burden of proof of sanity should be on those who propound a will, seeing that ordinary experience proves that the vast majority of testators are of sound mind, and the presumption of soundness is founded upon that knowledge. It is not necessary to prove that it was dark at twelve o'clock on the morning of the first of January. It would be necessary for any one who relied upon the fact that it was daylight at that time to prove it, if he could. Presumptions are leanings of law, and the law leans to the opinion that most men are able to make rational wills, and hence the burden of proof ought to be on those who deny sanity. If it could be made to appear that this opinion of the law was erroneous, there would be a reason for shifting the burden of proof to those who propound the will, not otherwise.

§ 518. **Burden of Proof where Insanity has been Proved to Exist.**—Where, however, it has been proved that the testator was insane for a long period previous to the execution of his will, the presumption of law, founded upon the facts of observation, is that he was insane at the time the will was made. Thus it was said in the Court of Probate that "if unsoundness extending over years be once proved

[1] Delafield *v.* Parish, 25 N. Y. 10.

[2] Davis *v.* Rogers, 1 Houston, (Delaware,) 44; Comstock *v.* Hadlyme, 8 Conn. 261; Taff *v.* Hosmer, 14 Mich. 309; Crowninshield *v.* Crowninshield, 2 Gray, 524.

by those who oppose a will, there is no doubt, as a proposition of law, that they are not bound to carry the evidence of insane actions or delusions up to the very moment of the testament. A diseased state of mind once proved to have established itself, would be presumed to continue, and the burden of showing that health had been restored falls upon those who assert it."[1] This, then, is the law with regard to the burden of proof where a lucid interval is alleged as the ground of validity of an instrument made during its continuance by a person at other times insane. The lucid interval must be proved.[2] Where, however, the disease was not of a continuous nature, but was liable to exacerbations and remissions—where it was spasmodic in its nature, and the chances of sanity were quite as great or greater than those of insanity, as in the case of *delirium tremens*,[3] this presumption does not arise, and the burden of proof is the same as in ordinary cases.[4]

§ 519. **Burden of Proof in connection with Contracts.**—In all cases of contract, the burden of proof is upon the party who assails it. There is, so far as we know, no dispute upon this point, and that fact shows the falsity of the position of those American Judges who have attempted to differentiate, in so far as the rule as to the burden of proof is concerned, between wills and contracts.[5]

§ 520. **Burden of Proof in Criminal Cases.**—The law of England at least is consistent throughout as to this matter of the proof of insanity. It always holds that a man is innocent until he is shown to be the reverse, and it always holds a man to be capable of civil acts and responsible for criminal ones until the contrary is proved. Thus in the Macnaughten

[1] Smith *v.* Tebbitt, 1 L. R., Prob. 434. See also Emery *v.* Hoyt, 46 Ill. 258; Staples *v.* Wellington, 58 Maine, 453.

[2] Reg. *v.* Stokes, 3 Car. & K. 188; Reg. *v.* Taylor, 4 Cox C. C. 155; Cartwright *v.* Cartwright, 1 Phillim. 100; Hoge *v.* Fisher, I P. C. C. R. 163; Whitmack *v.* Stryker, 1 Green C. R. 8; Harrison *v* Rowan, 3 Wash. C. C. 580; Goble *v*, Grant, 2 Green Ch. 629; Stevens *v.* VanCleve, 4 Wash. C. C. R. 262; Kelly *v.* Webster, 8 Shep. 46; Hix *v.* Whittemore, 4 Mete. 545.

[3] State *v.* Stewall, 3 Jones N. C. 245.

[4] Lewis *v.* Baird, 3 McLean, 55; Menkins *v.* Lightner, 18 Ill. 282; Achey *v.* Stephens, 8 Ind. 411.

[5] Howe *v.* Howe, 99 Mass. 88; Myatt *v.* Walker, 44 Ill. 485.

case,[1] it was determined that in all such cases the jury ought to be told that every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved to their satisfaction. So in Regina *v.* Stokes,[2] it was decided that when the defence of insanity is set up in order to warrant the jury in acquitting the prisoner, it must be proved affirmatively that he is insane, if the fact be left in doubt, and if the crime charged in the indictment is proved, it is their duty to convict. Again, in another case, it was said that "where a prisoner sets up insanity as a ground of defence, one cardinal rule is that the burden of proving his innocence on that ground rests on the party accused. The question in such a case for the jury is not whether the prisoner was of sound mind, but whether he has made out to their satisfaction that he was not of sound mind. The jury may come to a conclusion on this point from the conduct and acts of the accused shortly before and down to the commission of the alleged crime."† And the Court in this case added two laws of evidence which it may be as well to quote in this place. The first was that "although insanity on one point, for instance a delusion as to property, will not exempt a party from responsibility, the fact is not immaterial in considering his responsibility at another time and on another subject." And the second, that "the want of motive for the commission of the crime and its being committed under circumstances which render detection inevitable, are important points for the consideration of the jury when coupled with evidence of insanity on any particular point."[3] In America, we again find a considerable difference of opinion from that which is universally entertained by our Judges, and a good deal of difference even among American Judges themselves. Some hold, as in England, that insanity must be proved beyond reasonable doubt;[4] some that the jury are to

[1] 10 Clark & F. 200; 1 C. & K. 130; 8 Scott N. R. 595.
[2] 3 Car. & K. 185. † Reg. *v.* Layton, 4 Cox C. C. 149.
[3] See also Atty. Gen. *v.* Parnther, 3 Brown C. C. 441; Reg. *v.* Davies, 1 Foster & F. 69. The same rule is observed in Scotland.—Lord Advocate *v.* Campbell & Smith, 2 Irvine, 1; McFayden's Case, 3 Irvine, 664; Gibson's Case, 2 Broun, 332, at p. 353.
[4] The defence must be proved beyond a reasonable doubt. People *v.* McCann, 16 N. Y. 60; State *v.* Spencer, 1 Zabriskie, 202; Kriel *v.* Com., 5 Bush, Ky., 362; McKenzie *v.* State, 42 Ga. 354; State *v.* Huting, 21 Mo. 477, where it is said, "the jury must *believe* that insanity exists;" State *v.* Holme, 54 Mo. 164; State *v.* Smith, 53 Mo. 267; Bonfanti *v.* State, 2 Minn. 123—followed in 12 Id. 538, 13 Id. 341; Clark *v.* State, 12 Ohio, 495.

decide in accordance with the weight of evidence, and are not, before acquitting a prisoner, to require insanity to be made out beyond reasonable doubt;[1] and others, that it is in-incumbent upon the prosecution to make out sanity just as they have to prove guilt.[2] In reference to the first, we need add nothing here. As we have seen, it is the English rule: it is in conformity with the principles which are applied to evidence in civil issues, and it is, to our thinking, founded upon reason and common sense.[3] With reference to the second, it may be useful to quote one or two of the authorities. Thus in one of the most recent cases, it was held "that in a criminal prosecution where the insanity of the prisoner is the defence, it is incumbent on him to overcome the presumption of sanity and establish his insanity by a preponderance of testimony or evidence that is satisfactory. The rule requiring the evidence in a criminal prosecution to satisfy the jury beyond a reasonable doubt of the defendant's guilt is applicable only to the general conclusion of guilty or not guilty upon the whole evidence, and not to any one fact in the case." At the same time the Court added, "To raise a reasonable doubt of his sanity is not enough."[4] Thus in another State the Court told the jury "that the onus is on the defendant to prove by a preponderance of evidence that at the time of committing the act he was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he

[1] Com. *v.* Eddy, 7 Gray, 583; Com. *v.* Rogers, 7 Met. 500; also Report by Bigelow & Bemis, p. 281; Lœffner *v.* State, 10 Ohio, 599; McKenzie *v.* State, 26 Ark. 334; Com. *v.* York, 9 Met. 93. In State *v.* Starling, 6 Jones, N. C., 367, the Court said: "He must prove his case as you would require the proof of any fact about which parties are at issue." In People *v.* Myers, 20 Cal. 518, a preponderance of proof of insanity was necessary; so in People *v.* McDonald, 47 Cal. 136. See Bond *v.* State, 23 Ohio St. 349, "a bare preponderance is all that is necessary." As to idiocy, see Com. *v.* Heath, 11 Gray, 303.

[2] People *v.* Garbutt, 17 Mich. 9. See also State *v.* Bartlett, 43 N. H. 224; Polk *v.* State, 19 Ind. 170; Stevens *v.* State, 31 Ind. 485; Hopps *v.* People, 31 Ill. 385; Ogletrio *v.* State, 28 Ala. 701; State *v.* Marler, 2 Ala. 43; State *v.* Brinyea, 5 Ala. 241; Smith *v.* Com., 1 Duvall, Ky., 224; State *v.* Crawford, 14 Am. L. Reg., N. S., 21; Dove *v.* State, 3 Heisk. 371.

[3] In Boswell *v.* Commonwealth, 20 Gratt. (Va.) 860, the Court held that insanity must be proved to the satisfaction of the jury to entitle the accused to be acquitted on that ground, and that mere doubt of the sanity of the prisoner was not sufficient to justify an acquittal. See also Kriel *v.* Com., 5 Bush, (Ky.) 302.

[4] State *v.* Felton, 32 Iowa, 49.

was doing, or if he did, that he did not know it was wrong."[1] Then with regard to the third of these rules, we find that in one case it was held that the defendant in a criminal case is not required to prove his insanity but merely to create a reasonable doubt on the point, whereupon the burden of proving his sanity falls on the State.[2] It is scarcely necessary to add anything with reference to the preferability of the first of these rules. The excellence of the rule that it is incumbent upon the State to prove the guilt of an accused person has never been questioned. It would be clearly unjust to throw the burden of establishing innocence upon a person accused. The difficulty of meeting a broad assertion would be too great, and there is common fairness and reason in making those who impeach what is supposed to exist, viz., innocence, produce some evidence of the truth of their assertion. But the case is very different in relation to sanity and insanity. Here every man is presumed sane. Sanity is the normal condition of each man, and it is the departure from what is common that must be proved. Again, as to the question of proof beyond reasonable doubt, it may be remarked that such evidence is necessary upon the same clear general principles. It is true that doubt of guilt is to be in favor of the prisoner, but that is because of the presumption of innocence: on the other hand, as the presumption is in favor of sanity, if there is only a doubt in the mind of the jury, their uncertainty ought to be decided in the direction of the presumption, viz., in favor of sanity, and hence the demand that in all cases the mental disease must be made out to the jury beyond reasonable doubt. We cannot but regard the English law upon this point as satisfactory, and the American decisions as fatally false, both upon the principles of law and the principles of philosophy. It has always occurred to us that the numbers of decisions which can be quoted on almost any point from American books and reports indicates not only the

[1] State *v.* Lawrence, 57 Maine, 574. See also State *v.* Hundley, 46 Mo. 414; State *v.* Klinger, 43 Mo. 127; Com. *v.* Heath, 11 Gray, 303; People *v.* Coffman, 24 Cal. 230; Com. *v.* Eddy, 7 Gray, 583; Fisher *v.* People, 23 Ill. 283.

[2] Bradley *v.* State, 31 Ind. 492. See also State *v.* Jones, 50 N. H. 369; Smith *v.* Com., 1 Duvall, (Ky.) 224.

varying practice of different States, but a want of due caution and consideration on the part of many of their Judges of the cases which have actually been decided, and of the principles upon which these decisions were based. We say this at the same time that we entertain a deep respect for many of the Judges, and a thorough admiration of the work they are doing, as well as of the text-books that are being produced.[1]

§ 521. **Jury may Judge of the Prisoner's State of Mind.**—In very many cases of insanity, ordinary common sense people are in quite as good a position to form an accurate and judicious opinion in relation to the sanity or insanity of another as medical men, and it has struck a good many lay readers—who have remarked upon it to us—that when medical men are put into the box, and when having given an opinion as to the mental unsoundness of an individual, they are asked to state the grounds of their opinion, they give reasons of precisely an analogous nature to those which would be given by ordinary persons, saying, "No one but an insane man would have said so and so," or "No sane man would have behaved in such a way," and the like. There is a good deal of truth in this, but at the same time there are cases in which the experience of experts can be made of real use, just as there are cases in which the jury are in a position themselves to come to a conclusion with regard to the soundness or unsoundness of the mind of an accused person. This is allowed in our courts. Thus a party having been indicted for the misdemeanor of uttering seditious words, and upon his arraignment refusing to plead and showing symptoms of insanity, and an inquest being forthwith taken under 39 and 40 Geo. III., c. 94, s. 2, to try whether he was insane or not, it was held, first, that the jury might form their own judgment of the present state of the prisoner's mind from his demeanor while the inquest was being taken, and might thereupon find him to be insane, without any evidence being given as to his present state, and it was further held that upon his showing strong symptoms of insanity in court during the taking of the inquest, it became unnecessary to ask him whether he would cross-examine the witness or would offer

[1] See § 520 *a* in Addenda.

any remark on the evidence.[1] But in relation to this it must be remembered that insanity, so as to deceive unskilled eyes, can be feigned with very great facility. A glance at some of the instances of successfully simulated disease will show that in many cases it would be inexpedient to trust to the observation of the jury upon the trial, just as it would be unwise to place much reliance upon the evidence of facts gathered at a single interview. It is only through a course of observation that the simulation can be detected.[2]

§ 522. **Procedure on Trial of Issue of Sanity or Insanity.**—Where a jury is empanelled to try whether a prisoner is insane or not at the time when he is brought to plead to an indictment, the counsel for the prosecution is to begin to call his witnesses to prove the sanity of the prisoner.[3] But where a jury is enpanelled at the instance of the counsel for a prisoner to try whether he is insane or not when he committed the crime, the proof of insanity is incumbent on his counsel.[4] A grand jury has no authority by law to ignore a bill for murder on the ground of insanity: it is their duty to find the bill, otherwise the Court cannot order the detention of the party during the pleasure of the Crown, either on araignment or trial, under 39 and 40 Geo. III., c. 94, ss. 1 and 2.[5] In all cases the insanity of an accused person is a question for a jury, and in a case where a bill had been found against an insane prisoner for murder—he having been removed by order of the Secretary of State to the County Asylum—and where the medical superintendent of the asylum had made an affidavit that he was in a hopeless state of insanity, the Court nevertheless required the lunatic to be brought up and his alleged insanity to be inquired into by a jury. It would not, however, compel the production of the lunatic or the inquiry by the jury if it appeared that it would be dangerous to bring him into court."[6]

[1] Reg. *v.* Goode, 7 A. & E. 536. See Reg. *v.* Dwerryhouse, 2 Cox C. C. 446.
[2] See chapter on Feigned Insanity.
[3] Reg. *v.* Davies, 6 Cox C. C. 326; 3 C. & K. 328.
[4] Reg. *v.* Turton, 6 Cox C. C. 385.
[5] Reg. *v.* Hodges, 8 C. & P. 194.
[6] Reg. *v.* Dwerryhouse, 2 Cox C. C. 446.

§ 523. **Proof of Insanity: Hereditary Tendency.**—There is scarcely anything in connection with the proof of insanity which can be regarded as at all unique. Many of the questions of proof will be discussed when we come to speak of medical experts, and there is only one question which it is important to consider in this place, and that is, the admissibility of evidence of hereditary predisposition where the sanity or insanity of a prisoner is in question. In speaking of the causes of insanity, we have had occasion to refer to the influence of disease in ancestors upon the health of descendants. We have seen that in most cases of insanity the disease has a pedigree, and that in all cases it is of the utmost importance to diagnosis, prognosis, and treatment, to understand the real antecedents of the patient; and any study of the antecedents of the patient would be thoroughly defective without some knowledge of the antecedents of those who went before him. Now, it being proved by science that the inquiry into hereditary predisposition is the best means of arriving at a conclusion as to the sanity or insanity of the accused, or at least of confirming an opinion as to such sanity or insanity, is it right that law should prevent such proof in the trial of an issue? It was said by a Scotch Judge that the inquiry was into the sanity or insanity of the accused, and not as to the mental condition of any of his relations; and he might have added with perfect truth, that the proof of the mental unsoundness of all the panel's relatives would not establish the fact of his insanity. But there are two kinds of evidence: the one direct, and the other indirect—the one establishing, the other confirming. The latter is insufficient without the former, but the former is often insufficient without the assistance of the latter. Thus, in answer to this Scotch Judge, it might be said, suppose the question is whether a man was drunk or not. Here it is evident that that is the question, and not whether he had been drinking; but if you can show that he had drunk a large quantity of stimulants, this proof, added to evidence of conduct which of itself might be insufficient to prove intoxication, will go far to show he was drunk. And such proof is clearly admissible. So in a bastardy case, the question is as to whether this man, who denies it, is the father of this child. All the

courtship of the mother in the world will not prove him to be the father, but it is a kind of evidence which is held to confirm the truth of the mother's oath. Now, it is exactly in this way that proof of hereditary predisposition should, in our opinion, be allowed in a court of law. No proof of predisposition, the jury ought be warned, is sufficient of itself to *prove* that the accused person is insane, but where there is some proof of insanity, evidence of the existence of disease in other members of the family ought to be admitted, and ought to be taken for what it is worth.

§ 524. **Proof of Hereditary Predisposition: Rule of Law.**—There seems to have been an opinion in England up to very recent times that such evidence was inadmissible,[1] and in Scotland the rule has been repeatedly laid down. Thus, in Gibson's case,[2] evidence that the maternal aunt of the panel had been afflicted with insanity was held to be inadmissible in support of a plea of insanity. In another case, the counsel wanted to show that the paternal uncle of the prisoner died insane, and was not allowed to do so.[3] And in another earlier case, the same rule was laid down.[4] The fact that in these cases this kind of evidence was disallowed is somewhat curious when taken in connection with a case in which the charge was child-murder, and where it appeared that the body found had six toes on each foot, the prosecutor was allowed to ask a medical man whether any of the accused's family had extra toes.[5] Why that question should have been allowed, and questions as to the insanity of relatives be held inadmissible, it is impossible to see. This was a question of hereditary tendency in the same way that insanity is, but the inference to be drawn from the malformation of the feet of any of the members of the family of the accused was not nearly so direct nor so strong as that from

[1] Shelford on Lunatics, 59.

[2] High Court, 23d Dec., 1844; 2 Broun, 332, at 347. See also Walker *v.* McAdam, 8th March, 1806; 13 Fac. Col. 548.

[3] Lord Advocate *v.* J. Brown & G. Brown, (Perth,) 25th April, 1855; 2 Irvine, 154. See also Dingwall's Case, (Aberdeen,) 19th and 20th Sept., 1867, 5 Irvine, 466.

[4] Malcolm McLeod's Case, (Inverness,) 14th April, 1838, 2 Swin. 88, and Bell's notes, 5.

[5] Thompson (High Ct.) 4th Dec. 1848, Shaw, 129.

insanity to insanity. In the one case, nature shows a tendency to revert to the ordinary form; in the other, she shows a tendency to continue the abnormal conditions. But that the cause of insanity may be considered as a corroborating circumstance in the Scotch Courts will be evident from the ruling in another case, where the counsel for the prisoner proposed that he should uncover his head in order that the jury might see the mark which was said to have been occasioned by an injury which he received in America. It had appeared in evidence that he was liable to derangement, especially after drink, and this tendency, it was said, had been increased by the injury alluded to. The Court would not allow this inspection, on the ground that the existence of the mark prior to the offence had not been proved.[1] Had this proof been forthcoming, then the inference is that the jury would have been allowed to take into consideration this cause of derangement, as giving a probability of the existence of the disease upon which the defence relied. We cannot, therefore, hold that the ruling of the Scotch Courts with reference to this point has been satisfactory. In one case, where it was held that in determining if the panel had an access of delirium, the question whether, in the opinion of the witness, it is of importance to inquire whether there was insanity among the relations of the panel, was disallowed.[2] We think that this ruling was correct. The opinion of witnesses as to the laws of evidence or the importance of certain inquiries is of little worth, and is certainly not a question which is admissible on the trial of a question of sanity or insanity. The rule in England has, however, been somewhat less strict as to the exclusion of this evidence. Thus, in Reg. *v.* Ross Tuckett,[3] the question whether a maternal grandfather of the prisoner had not been confined in a lunatic asylum was allowed. In the case of Arthur O'Connor, who made an attempt to shoot or frighten the Queen in 1872, hereditary taint was one of the strongest points put forward by the defence; and although evidence to that effect was allowed, it

[1] Thompson (High Ct.) 4th Dec. 1848, Shaw, 129.
[2] McQue's Case, (High Court,) 12th March, 1860, 3 Irvine, 578; 12 Jur. 478.
[3] 1 Cox C. C. 102.

failed to satisfy the jury, and the prisoner was convicted. In the case of Christina Edmunds, evidence to the effect that her father died in a lunatic asylum when of middle age, having suffered for years before his death from homicidal and suicidal mania; that her brother died at Earlswood Asylum an epileptic idiot; that her grandfather was subject to cerebral disease, and that her sister suffered from hysteria, seems to have been received.[1] But as this was almost the only proof of insanity offered, the jury came to the conclusion that the prisoner was not insane. Again, where a married woman, who was fondly attached to her children and apparently most happy in her family, had poisoned two of them, with some evidence of deliberation and design, evidence to the effect that there was insanity in the family; that her conduct after the act, although not wholly irrational, was curiously erratic and excited; that there were certain exciting causes of insanity; and that from these circumstances the medical men were of opinion that she was laboring under actual cerebral disease, and that she was in a paroxysm of insanity at the time of the act, was allowed to go to the jury as evidence, on which they rightly found her not guilty, on the ground of insanity.[2] In another case, in which it appeared that a married woman had killed her husband, evidence of the cause of the disease was allowed, for there it appeared that the murder had been committed immediately after an apparent recovery from a disease (the result of childbirth) which caused a great loss of blood, exhausted the vessels of the brain, and thus so weakened its power, and so tended to produce delusions of the senses, which, while suffering under such disease she complained of, and which by her own account had been renewed at the time of the homicidal act, although they were not such as would lead to it; and it was decided by Erle, C. J., that that was evidence from which the jury might properly find that she was not in such a state of mind at the time of the act as to know its nature and be accountable for it.[3] It would be absurd for

[1] See Lancet, 1872, I., pp. 89, 107, 734, and Med. Times and Gaz., 1872, I., pp. 71, 101, 111.

[2] Reg. *v.* Vyse, 3 Foster & F. 247, per Wightman, J.

[3] Reg. *v.* Law, 2 Foster & F. 836.

the law of England to disallow proof of hereditary taint in corroboration of direct evidence of mental disease when it has allowed family likeness to be sworn to as a corroborative proof of paternity. In the Douglas Peerage Case in 1767, Lord Mansfield said that he had always considered likeness as an argument of a child being the son of a parent; that a man may survey ten thousand people before he sees two faces exactly alike, and that in an army of a hundred thousand men every man may be known from another; that if there should be a likeness in feature, there may be a difference in the voice, gesture, or other characters; whereas family likeness runs generally through all of these, for that in everything there is a resemblance, as of feature, voice, attitude, and action. It is true that Lord Mansfield very much overrated the value of this kind of evidence, and a certain recent case, which has occupied the Court of Queen's Bench for about a year, shows that there is no kind of evidence which is so unreliable, none which is really worth so little, as that of those who swear to family likeness.[1] But that very circumstance makes the case for the admission of evidence as to hereditary predisposition the stronger. There is no doubt about that dire family likeness.

§ 525. **The American Rule as to the Admission of Proof of Insanity of Relatives.**—In an American case, in which the validity of a will was in question, on the ground that the testator, Captain Arrowsmith, was insane, the plaintiff's witnesses spoke as to acts of sudden and unprovoked passion, violence, wildness, extravagance, and eccentricity; and in order to corroborate the inference from them, her counsel offered the deposition of Susan Arrowsmith, the widow of one of the testator's brothers, that the testator's father was insane towards the close of his life; that one of the testator's two uncles, on the father's side, was insane and the other imbecile; that his two aunts, on the same side, and their children, were insane; that a son of one of them was in a madhouse, and that her own husband was mentally

[1] Reg. *v.* Castro. Some of the older cases of imposture, which in every feature resemble the Tichborne case, have been collected in an interesting and able pamphlet by Mr. Joseph Brown, Q. C.

disqualified before his death. In this case, the admission of the deposition was opposed, on the ground that the legitimate inquiry was into the state of the testator's mind, not that of another; and that it did not follow that because the testator's father and his colleteral relations were insane, he must have been so too. Gibson, C. J., said: "I admit the deposition without hesitation, notwithstanding the dicta of Mr. Shelford[1] and Mr. Chitty,[2] that it is an established rule of law not to admit proof of insanity in other members of the family in civil or criminal cases. Established! When, where, by whom? Certainly not by the House of Lords in McAdam *v.* Walker,[3] the only case cited for it, for the question was there avowedly dodged. The High Court would not shock common sense by affirming the order of the Scotch Court of Sessions; nor would it gratuitously reverse it, when the decision could be safely put on another ground. The authority of a judgment appealed from and left *in dubio* cannot be very great. Sir Samuel Romilly's argument against the evidence was rested on the fecundity and interminableness of collateral issues; and Mr. Chitty seems to have had a glimpse of the same idea when he said the course is to confine the evidence to the mental state of the party. But every new fact, though it open a new field of inquiry, is not collateral. It may bear directly on the fact in contest; and where it does so it is not in the power of the Court to shut it out. A collateral issue is such as would be raised by allowing a party to put a question to a witness on cross-examination in regard to a fact palpably unconnected with the cause, in order to afford an opportunity to discredit him by contradicting him, but does not proof of hereditary madness bear directly on the condition of the mind, which is the subject of investigation? What if the point had been ruled by the Chancellor and law Judges of the House of Lords? Profoundly learned in the maxims of law, they were profoundly ignorant of the lights of physiology; yet, free from the presumptuousness of which ignorance is the foster-father, they refuse to rush on the decision of a question to which they felt themselves incompetent. Mr. Chitty fancifully puts the solu-

[1] On Lunatics, 59. [2] Med. Jurisprudence, 355. [3] 1 Dow's Parl. Cas. 148.

tion of the question of insanity on the doctrine of legal presumptions. 'As the imputation,' he says, 'is contrary to the natural presumption of adequate intellect, the deficit should be established by direct and positive evidence, and not merely by conjectural or probable proof.' If that be law, the question of insanity is the only one in which positive evidence is required and circumstantial evidence to corroborate is rejected. Why is evidence of an old grudge admitted against the prisoner as a remote proof of malice if the remote proof of hereditary insanity may not be given by him to rebut it? and why should the presumption of sanity be allowed to overbear the presumption of innocence, the strongest of them all? I admit that hereditary insanity will not of itself make out a case for or against a member of the family; but to say that it may not corroborate what Mr. Chitty calls direct and positive proof, without defining it, staggers all belief. He says harsh conduct, bursts of passion, or displays of unnatural feeling, will not of themselves establish insanity. Be it so! But because the springs of such actions are concealed, are they never to be laid bare, and shown to be seated in the blood? When it is admitted by Mr. Chitty and Mr. Shelford themselves that insanity is a descendable quality, they give up the argument."[1] In another case, the Court said: "We think the practice has been to admit evidence of insanity in the family. We think the practice is right in principle. It rests upon the ground of hereditary character of insanity, that a predisposition to the disease is frequently transmitted from parent to child. With such predisposition, the malady may not show itself in the child, for the child may not be exposed to any exciting cause. But with such hereditary taint, insanity supervenes from slight causes—causes apparently wholly inadequate to affect the mind without the predisposition. In making a diagnosis of such a case, we suppose that, among the first questions which would be put would be the question whether the parents of the patient were or had been insane. With the fact that father and mother, or either of them, had been insane, that the insanity had appeared in them at about the same age and in the same form, its exist-

[1] Smith *v.* Kramer, 1 Am. Law Reg. 353; S. C. 5 Pa. L. J. Repts. 226.

ence in the child is more probable and is believed on less perfect evidence."[1] In another case, it was held that the proof of such insanity must go to the extent that the malady was notorious, and that it was of the same species as that with which the other members of the family have been afflicted.[2] In favor of the latter proposition, as it seems to us, nothing can be said. Disease alters its form. We have, as we know, epilepsy in a father, and well-marked mental aberration in the son; mania in a mother, resulting in the idiocy of a child. But although there can be no question as to the expediency of admitting proof of the insanity of relatives of the accused, all such evidence is to be received with the greatest caution. The difficulty of judging of the presence or absence of mental disease is exceedingly great. The mere assertion that a certain person was insane, or queer, or morbid, made by an ordinary individual, is worth very little, and its worthlessness is likely to be greater if the individual concerning whom such an assertion is made is dead, and therefore personally unable to refute the assertion. For this reason, then, all such evidence is to be received with grains of allowance. Again, in reference to such proof, it must be clearly remembered that almost no family has a clean bill of mental health. Almost every family would to diligent searching yield cases of disease, and even where mental aberration cannot be positively asserted, there is dotage, and the decay of old age which can so easily be mistaken for dementia, that partial witnesses—and all witnesses are more or less advocates—may easily confound them, and thus speak to hereditary taint where none really exists. Again, all evidence of the disease of relatives of accused persons should be weighed in relation to the facts of the family, and it ought, in our opinion, be competent to the prosecution to produce rebutting evidence of health where the proof of insanity is to be eked out by evidence of the mental disease of relatives. The proof that the accused had an uncle and a grand-uncle insane, goes a very little way, if it is shown that he had fifteen uncles who were not insane, and twenty-three grand-uncles who possessed perfect mental

[1] Baxter *v.* Abbott, 7 Gray, 81.
[2] State *v.* Christmas, 6 Jones (North Car.) 471.

health and vigor throughout their lives. The significance of the mental aberration of a brother or sister is very much diminished if it appears that there was a family of thirteen, and increased if it is an only brother or sister who was thus affected. The proof of the wide-spread health of a family, in which sporadic cases of disease may have existed, dilutes the value of the proof of hereditary taint, just as it diminished the influence of that taint on the life of the individual whose mental condition is the subject of inquiry. Thus guarded, however, proof of hereditary insanity should, in our opinion, be admitted in courts of law.[1]

[1] See also cases in which evidence of this kind was admitted. Baxter *v.* Abbott, 7 Gray, 81; People *v.* Garbutt, 17 Mich. 9; People *v.* Smith, 31 Cal. 466. See Snow *v.* Benton, 28 Ill. 306; 1 Redfield on Wills, 3d ed., § 156, 157.

ADDENDA.

Note to § 10.

This bill was referred to a select committee of the House of Commons, which reported[1] that they were of opinion "that it is not desirable to proceed with the present bill, notwithstanding that this experiment in codification has been presented to them with every advantage that learning and skill can give it."[2] Some of the evidence which was taken by the committee is interesting. Mr. Fitzjames Stephen, Q. C., who drew the bill, said with reference to the sections quoted: "With regard to the law upon that subject, (the effect of insanity,) the standard authority, as the committee of course are well aware, is the opinion of the Judges given in Macnaghten's case, although of course the committee are also aware that very eminent Judges have greatly doubted the constitutional propriety of putting abstract questions of that kind to the Judges, and getting such answers from them. I have heard more than one of the most eminent Judges on the bench express themselves as being doubtful with regard to that authority on that ground. However, as a matter of fact, I think it will not be doubted that that at the present day is generally regarded as the leading authority upon the subject of insanity. Now, as to that authority, I think this section varies from it slightly, but it varies from it by clearing up what I have always regarded as an ambiguity in the judgment as to a matter upon which the Judges may possibly not have felt themselves called upon to give any opinion. They say, that in order that a man may be excused by insanity from the consequences of his crime, it must be shown that he did not know that what he was doing was wrong. When the answers were returned to the House of Lords, there was a debate upon that, and in the debate on that subject, Lord Brougham objected and said that it ought to be that he did not know that what he was doing was forbidden by law, and that the word wrong should not be used. The Judges adhered to the word 'wrong,' and said that if they said, 'forbidden by law,' it might be interpreted to weaken the principle that every one was presumed to know the law. However, there the matter stands, so that it is left doubtful whether the word wrong means morally wrong or forbidden by law. I think that with regard to the propriety of the act as it stands in this section, I could embody the argument in favor of it in a few simple illustrations. I will put one illustration in each of these subdivisions, and I think those illustrations will at any rate explain the reason why that section was drawn in that form. If the subject is considered too delicate for legislation at all, it might be said, 'homicide is not criminal if the person committing it is not in a state to be by law responsible for his acts;' but I will just give an illustration of each of these sub-sections. Sub-section *(a)* is as follows: 'Homicide is not criminal if the person by whom it is committed

[1] 21st July, 1874. [2] Report, p. 4.

is at the time he commits it prevented by any disease affecting his mind (*a*) from knowing the nature of the act done by him.' A. is, by a disease affecting his mind, led to suppose that B. is a wild animal, and shoots him accordingly. It is not denied that in that case insanity excuses him. Then comes sub-section (*b*), 'from knowing what is forbidden by law.' That is universally admitted; the narrowest interpretation of the Judges' opinions in Macnaghten's case would allow that; and it would produce this curious result, which, however, sufficiently explains what it means. Suppose a man were under an insane delusion that an act of Parliament had been passed by which murder had ceased to be criminal; then if he goes and shoots anybody, according to that interpretation, he is freed from the consequences of his crime. Sub-section (*c*) excuses a person prevented by disease affecting his mind 'from knowing that it (his act) is morally wrong.' The word morally (his act) is considered as enlarging the existing law. I cannot believe that it does, and I will put one or two illustrations upon the subject which are real illustrations, (I have seen them stated, at least, in works which profess to be authorities,) and which seem to me to show conclusively that this is not too wide. There was a case in which a man was under the delusion that he was Jesus Christ; that sort of delusion, I believe, is not uncommon: he also thought that it was essential for the salvation of the world that he should be put to death, and he further thought that it would spoil the effect of his being put to death if he were to kill himself, because it would be wicked. Therefore, in order that he might be hanged, and the world might be saved, he went and murdered somebody else. Now, if you interpret the word 'wrong' as meaning not morally wrong but forbidden by law, that man ought to have been hanged, because he not only knew that the act was forbidden by law, but the very reason why he did it was because it was forbidden by law. I can hardly argue with anybody who says that one in such a monstrous state of mind as that ought to be hanged. Taking these as illustrations, you have two men before you: the one man commits a murder because he is under an insane delusion that Parliament has passed an act authorizing him to do so, and he is not to be hanged but to be confined in a lunatic asylum. The other man commits a murder under the monstrous delusion which I have mentioned, and he is to be hanged because he knew what he did was forbidden by law. I do not think the public would ever agree to that. That leads one to ask, if it is admitted that the second man is not to be hanged, why is he not to be hanged? The answer is: he is not to be hanged because he is not in the state of mind which the law presumes in those whom it addresses and threatens. When you pass a law punishing a man for crime, you are dealing with a reasonable being—you are dealing with a being whom you presume to know that on a great many familiar grounds, quite independent of any fear of punishment, he ought not to commit crime; who knows, for instance, that if he does commit a murder, he causes extreme distress, and great fear, and it may be, ruin to his neighbours, and does a thing cruel and brutal in itself. That is the assumption on which the criminal law proceeds, that it is addressed to ordinary reasonable beings; but it seems to me that if a man by bodily disease is placed in such a position that he cannot feel that at all, and that he does not know the nature of this act and the consequences of it, he ought to be locked up in a lunatic asylum, and that exactly as much whether the nature of his delusion does or does not prevent him from remembering that the law has forbidden his act. I think that the illustration which I have given (and I could give twenty such) conclusively shows that when you are dealing with a person under those circumstances, the prospect of being punished by law, the mind being perverted by madness, may actually be an inducement to commit crimes. Subsection (*d*) applies to a man prevented by disease affecting his mind 'from controlling his own conduct.' Now, that again is a case which it is said ought not to form part of the law, and I have often heard Judges say that it is a monstrous thing for anybody to believe in what is called irresistible impulses, and that the doctors who give evidence upon these trials, constantly put forward as irresistible an impulse which is not in fact resisted; and no doubt they do.

I have had a great deal to do with cases of this kind. I had to try a case of that nature on the circuit last summer, and I have been counsel in them, and there is no doubt that doctors do come forward and make statements which seem to be extremely foolish on that subject. But it is not because a man makes a foolish statement on that subject that the law is to put itself in a false position. It seems to me that if the fact is, that there are diseases of such a nature that my arm may suddenly rise and plunge a knife into some person near me, just as mechanically as if I were in a convulsive fit, so to treat me as a murderer for doing it would be monstrous. And it also appears to me that the question whether or no such diseases do actually exist is a question of fact which the law ought not to prejudge in any way whatever, and if it be the case that there are such diseases, if that is proved by people who are skilful in these matters, I cannot see why that should not be left to the jury as well as any other fact, it being always pointed out to the jury by the presiding Judge that it is one thing not to resist an impulse, and another thing to be under the prey of an irresistible impulse in consequence of disease. Suppose a person rendered irritable by toothache were to go and kill somebody, I should say there was no excuse at all. In the same way, if an insane desire arose in a man's mind, as in Dove's case, to kill another person which was to some extent nourished by his own wickedness, I should say I would hang that man without mercy if he gratified that insane wish, but I would hang him, not because I should disregard an uncontrollable impulse, but because I should not believe that that impulse was uncontrollable, and because he gave way to a thing which he ought to have controlled, and could have controlled. I recollect very well that in that case Baron Bramwell, who tried it, put this question to one of the doctors who was giving evidence that Dove could not help what he did: 'Supposing a man had been standing by him with a loaded pistol in his hand when he was going to poison his wife, do you think that he would have done it then?' 'No, I do not.'[1] Then he ought not to have done it under these circumstances. But supposing that the doctor was able to prove by referring to other instances that he would have been utterly unable to control himself, and that if you had put a rope round his neck ready to hang him, still that poison would have gone into that cup, that would be a case of uncontrollable impulse."

We cannot, however, quote at greater length from the evidence. The following sentences are taken from the memorandum of the Lord Chief Justice, Sir Alexander Cockburn. "I have already," he says, "expressed my concurrence in the proposed provisions as to the effect of insanity, except so far as the proposed legislation is partial, as limited to the case of homicide. But there is one general provision on this subject to which I must strenuously object: it is that "if a person is proved to have been labouring under an insane delusion at the time when he committed homicide, it shall be presumed, unless the contrary appears or is proved, that he did not possess the degree of knowledge or self-control hereinbefore specified."

"The pathology of insanity shows that the mind may be subject to delusions which do not in any degeee affect the moral sense or the will as regards the power of self-control. The mere existence of mental delusion ought not to affect the decision as to the power of self-control, unless the nature of the delusion be such as legitimately would lead to the inference that the power of self-control was wanting. The question is one which should be decided by all the circumstances, independently of any presumption one way or the other. I have further to observe that the provisions of section 24 are confined entirely to insanity as arising from disease. No provision is made for congenital malformation, in other words, for idiocy; nothing is said as to the responsibility of children. If it be said that this is to be sought in the general law as to the capacity to commit crime, it is obvious that the same thing applies to

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[1] Evidence, p. 9, question 21. See also question 22. The evidence of Mr. Baron Bramwell, p. 26, question 183, may also be consulted with advantage.

insanity. with which the bill professes to deal; another instance of the inconvenience of partial legislation as here proposed."[1]

Some very admirable criticisms were made upon this report by Dr. Bucknill, (Lord Chancellor's Visitor of Lunatics,) in an address which was printed in the British Medical Journal for November last, (1874,) upon "Responsibility for Homicide." Everything Dr. Bucknill says is worthy of the most careful attention, and we extract some portions of the paper referred to for the benefit of our readers. "Perhaps," he said, "Mr. Stephen's bill did err in being too ambitious an attempt to codify an intricate and obscure domain of law. But his method of classification appears to have been scientific, and most of the changes which he proposed to introduce seem humane and wise. The responsibility of postponing the amendment of laws so deeply condemned, and the responsibility of omitting to introduce another Amendment Bill, at the earliest date, must weigh heavily on some one's shoulders. In the evidence given before the committee, the Law of Homicide is most thoroughly examined, sifted, and divested of technicalities, so as to be made somewhat intelligible to the lay mind, and although the result has been that the committee has reported that 'it is not desirable to proceed with the present bill,' they have also reported on the existing state of the law of murder in terms so condemnatory that it would appear to be an imperative duty on the part of Government to make further efforts without delay to reduce the chaos into something like method and system." He went on to remark that, "The question of murder committed when the criminal is drunk, or mad from drink, appears to me far more difficult and complicated than Mr. Stephen seems inclined to admit. The question arose whether Mr. Stephen would include in his bill *delirium tremens* in the diseases which would prevent a man from knowing the nature of an act so as to render homicide not criminal. Probably Mr. Stephen had not had very large opportunities for observing the phenomena of drunkenness, otherwise he would scarcely have committed himself to the opinion that 'a man who was so drunk as not to know what he was about would hardly be likely to commit a murder.' Mr. Stephen appeared to see only two phases of the mental effects of drink, viz., recent drunkenness, in which a man knew what he was about, and which ought not to be excused from conviction for murder, and *delirium tremens*, which he owned to be a disease that would release from responsibility. Knowing somewhat more of *delirium tremens* than lawyers are supposed to do, I think you must admit that it is not a frequent condition of homicidal violence. A man suffering from this disease is usually too much prostrated in body and mind, too fearful and stricken, to commit homicidal violence, though he possibly might do so under the influence of delusion, attempting himself to escape from supposed murderers or fiends, in which case he would clearly be of unsound mind sufficiently to exempt him from responsibility. But the delirium from drink which commonly results in homicidal violence is that which we recognise as *delirium a potu*—the delirium which arises from the continued excitement of the stimulant, and not that very different delirium arising from the exhaustion which followed from those tremors of debility which we called *delirium tremens*. This *delirium a potu* did not yet appear to be recognised by lawyers. In drinking itself, also, as distinguished from delirium, there are varieties which ought to be recognised in relation to crime, that is, if the principle be assumed that the punishment of criminals ought to be guided by some knowledge of the conditions of their guilt. We would not wish to shield men who take drink in order to nerve themselves for the commission of premeditated crime, as in the case of Victor Townley who told me that he took brandy and opium to nerve himself for the dreadful crime for which undoubtedly he should have been hanged."

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[1] Report, Appendix No. 1, pp. 65, 66.

§ 520*a*. *Burden of Proof.*—In an important American decision recently published,[1] it was decided that in a criminal action where the defence of insanity is set up, it does not devolve upon the defendant to prove that he is insane by a preponderance of the evidence; but if, upon the whole of the evidence introduced on the trial, together with all the legal presumptions applicable to the case under the evidence, there should be a reasonable doubt as to whether the defendant is sane or insane, he must be acquitted.

Valentine, J., delivered the judgment. He said: "We suppose it will be conceded that no crime can be committed by an insane person. Or at least it will be conceded that no act which is the result of insanity, total or partial, the result of an insane delusion, or the result of an insane, uncontrollable impulse, can be denominated a crime. * * * The fact then of soundness of mind is as much an essential ingredient of the crime of murder as the fact of killing or malice, or any other fact or ingredient of murder, and should, it would seem, be made out in the same way by the same party, and by evidence of the same kind and degree, and as conclusive in its character as is required in making out any other essential fact, ingredient, or element of murder." * * * "Now, as no insane person can commit a crime, it necessarily follows that if the jury have a reasonable doubt of the defendant's sanity, they must also have a reasonable doubt of his guilt. To doubt his sanity is to doubt his guilt, and to doubt his guilt (if the doubt be a reasonable one) is to acquit. The doubt of guilt cannot be of a less degree than the doubt of sanity. And if the doubt of sanity be a reasonable doubt, the doubt of guilt must also and necessarily be a reasonable doubt. It has been said that this reasonable doubt goes only to the *corpus delicti*, the body of the offence. We scarcely know in what sense the words *corpus delicti* are here intended to be used, but in whatever sense they may be intended to be used, the proposition is probably erroneous. If it be said that the offence itself with all its essential ingredients (and this, in fact, is what constitutes the body of the offence, the *corpus delicti)* must be proved beyond a reasonable doubt, but that the *defendant's* connection therewith and *his* capacity to commit the same may be proved by a less degree of evidence, then the proposition is glaringly inconsistent and erroneous as applied to a case like the one at bar. For if the supposed offence be committed by the defendant alone, then, unless he has capacity to commit an offence, no offence is in fact committed. And if it devolves upon the defendant to prove his want of capacity by a preponderance of the evidence, if, in other words, the State may prove his capacity (where possibly a vast amount of evidence is introduced by both parties and on each side of the question) by an equilibrium of the evidence, by less than a preponderance of the evidence therefor, the crime itself is proved by less than a preponderance of the evidence. The plea of insanity is not in any sense like the plea of confession and avoidance.[2] The defendant does not say by his plea of insanity, 'It is true I committed murder as charged in the indictment, but I was insane at the time, and therefore should not be punished therefor;' for if he committed murder he could not have been insane, and if he was insane he could not have committed murder. The two things are wholly inconsistent with each other. But the defendant does say by the plea, 'I am not guilty of murder at all, nor of any other offence, because I was insane at the time the supposed offence was committed, and was therefore incapable of committing any offence.' Neither is the plea of insanity an affirmative plea on the part of the defendant. It is merely a part of the negative plea of 'not guilty.' All evidence of insanity is given under this negative plea of 'not guilty.' And it is given merely in rebuttal of the *prima facie* case that the State must make out of guilt and sanity. The defendant is never required to prove that he is not guilty by proving

[1] State of Kansas *v.* Crawford, American Law Register, vol. xiv., p. 21. Jan. 1875.

[2] See some careful notes in the American Law Register, January, 1875, in which this case is reported. See also Com. *v.* Thurlow, 24 Pick. 374, per Shaw, C. J.; State *v.* Bartlett, 43 N. H. 224.

that he is insane, but the State must always prove that the defendant is guilty by proving that he is sane. It is true that the State is not required in the first instance to introduce evidence to prove sanity, for the law presumes *prima facie* that all persons are sane; and this presumption of sanity takes the place of evidence and proves sanity in the first instance. *It answers for evidence of sanity on the part of the State.* But, if other evidence is introduced which TENDS TO SHAKE this presumption, the jury must then consider the same and its effect upon the main issue of guilty or not guilty. And if, upon considering the whole of the evidence introduced on the trial, together with the presumption of sanity, the presumption of innocence, and all other legal presumptions applicable to the case under the evidence, there should be a reasonable doubt as to whether the defendant is sane or insane, he must be acquitted. It is also true that when it is shown on the trial of a case that the defendant has committed an act which would be criminal if he were sane, and no evidence of insanity has been introduced, a *prima facie* case of crime and guilt has been made out by the State against the defendant. But the law does not, in such a case, nor in any case, require that the *prima facie* case of crime and guilt so made out by the State shall prevail unless it shall be overcome by a preponderance of the evidence. The State nearly always makes out a *prima facie* case of crime and guilt before it closes its evidence in chief and rests its case, but the defendant is never then bound to rebut this *prima facie* case by a preponderence of the evidence. He is required only to raise a reasonable doubt as to his guilt. The burden of proof is always upon the State, and never shifts from the State to the defendant. The making out a *prima facie* case against the defendant does not shift the burden of proof."

We have referred at some length to this ingenious judgment, not because we regard it as being correct, but as conveying in the most specious form all that can be said for the erroneous view of this subject. First, we would point out that there is a metaphysical nicety in saying that sanity being an ingredient of the crime, it must be proved by the prosecution, which is too fine for Courts of law. The fact that the accused is a man is equally a necessary ingredient in the idea of murder. Yet, could it be said that because the prosecution had taken the fact that he was a man for granted, it had failed to make out its case? Again, consciousness at the time the act was committed is necessary to the idea of guilt. Is it necessary for the prosecution to exclude by proof the possibility of the crime having been committed while the accused was unconscious? So, too, with regard to somnambulism. Indeed, if the rigid proof of all the ingredients of a crime were necessary, no crime ever could be proved beyond doubt. The learned Judge admits that the presumption of sanity answers for evidence upon the part of the State; but he says that if the presumption is shaken, it is the duty of the jury to acquit. He seems to us to fail to see the force of the presumption. It carries further than he imagines.[1] The presumption of innocence throws the whole burden of proof upon the prosecution, and if they leave a doubt unanswered, the presumption and the doubt entitled the accused to acquittal. If there were no such presumption, then the verdict would, it seems to us, have to be determined by the preponderance of the evidence. The presumption being, as it is, in favor of the accused and against the prosecution, the evidence must establish guilt beyond all reasonable doubt. But in relation to sanity and insanity, the presumption is the other way. Were there no presumption in the case, the weight of evidence must in each instance determine the verdict. But the presumption is of sanity. If there is no assertion of insanity, the presumption is evidence of it; but the presumption goes further, and throws the weight of disproving sanity upon those who rely

[1] The presumption has the effect of making proof of sanity non-essential to the proof of the commission of the crime. It makes doubt impossible until there is positive evidence the other way. Therefore, there can be no reasonable doubt against the presumption which is not founded on positive evidence: hence the burden of proof is on the defence.

upon insanity as a defence. This is always the case with presumptions. A presumption is a strong belief which is the result of general experience, and it is no mere doubt, however reasonable, which will shake it. The whole of a trial is only a conflict of testimonies. It is admitted that a presumption is in place of the evidence. In other words, it is general evidence instead of particular. It must be rebutted. And the question is as to the strength of the evidence which will do so. That it is a strong presumption seems to us to show that the evidence must be strong against it; that it must, in other words, prove insanity beyond reasonable doubt. The presumption saves the prosecution the trouble of making out the case on that point; but its strength is also sufficient to withstand mere doubt, and hence the excellence of the rule that insanity must be made out beyond all reasonable doubt to entitle the accused to acquittal. Wherever there is no experience of mankind, there is no presumption, and the point must be proved by preponderance of evidence. Thus, for instance, whether a pistol ball passing into a man's body at a certain place must inevitably cause death. Here the evidence must be weighed, and the verdict be given in accordance with the most trustworthy. Where there is a presumption, the evidence which negatives the facts presumed as an ingredient of the crime must be of such a nature as to remove all reasonable doubt.

But the learned Judge's argument, if it is good for any thing, is satisfactory to prove that in every case the presumption must make out the sanity of the accused. His whole argument as to sanity being an ingredient of the crime, goes to this. Yet strangely enough, he admits that the presumption of sanity is sufficient proof of sanity, unless it is shaken. But if the presumption is sufficient proof in cases where insanity is not set up as a defence, if the prosecution may in any case claim a conviction without proving sanity, then the whole question comes to be as to the strength of the doubt which should be allowed to rebut the presumption. Valentine, J., has given his opinion on this point, but all his arguments go to the point which he gives up. We cannot but think that in this respect the decision is erroneous, and that the rule of the English law is more conformable to the whole principles of jurisprudence and the science of law.

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